CARTER, MASSON, AND RICHARD NOMINATIONS

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF JOHN B. CARTER, JR., TO BE A MEMBER OF THE BOARD OF DIRECTORS, UNITED STATES SYNTHETIC FUELS CORPORATION; MILTON M. MASSON, JR., TO BE A MEMBER OF THE BOARD OF DIRECTORS, UNITED STATES SYNTHETIC FUELS CORPORATION; AND OLIVER G. RICHARD III, TO BE A MEMBER, FEDERAL ENERGY REGULATORY COMMISSION

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CARTER, MASSON, AND RICHARD NOMINATIONS

THURSDAY, AUGUST 12, 1982

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 3110, Dirksen Office Building, Hon. James A. McClure, chairman, presiding.

Present: Senators McClure, Domenici, Humphrey, Heinz, Johnston, Ford, Melcher, and Bradley.

Also present: Charles A. Trabandt, chief counsel; E. David Doane, counsel; and D. Michael Harvey, chief counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The committee will come to order. This hearing is to consider two Presidential nominations to the Board of Directors of the U.S. Synthetic Fuels Corporation—John B. Carter, Jr., of Texas for 2 years, and Milton M. Masson, Jr., of Arizona for 1 year.

In addition, this hearing will consider the nomination of Oliver G. Richard III, of Louisiana, to become a member of the Federal Energy Regulatory Commission for the term which expires October 20, 1985.

Bipartisan congressional support for creation of a special purpose Federal entity that would provide sufficient financial incentives to private industry to expedite commercial development of a synthetic fuel production capability in the United States crystallized in the 96th Congress. This support, spurred on by the 1979 cutoff of Iranian oil, led to congressional establishment of the Synthetic Fuels Corporation by the enactment on June 30, 1980, of the Energy Security Act. This action represents an unprecedented national commitment to the energy future of the United States.

Candidly, today we are troubled by continued suggestions in press articles such as in yesterday's Wall Street Journal and in internal administration documents such as the pending Cabinet Council review of the Synthetic Fuels Corporation that our unprecedented commitment is under increasing attack. We as a nation simply cannot retreat from that commitment on the basis of a temporary oil glut or instability in OPEC. We must proceed with the vigor of 1980 to develop a synthetic fuels industrial base for America.

The concern before us now is what the Synthetic Fuels Corporation is doing to assure that statutory goals are achieved in their full scope, and at the earliest, and we sincerely mean earliest, practical time. Consequently, the committee will want to have answers from the Board to the following questions.

What is the specific awards strategy being pursued by the Board of Directors, including when and on what basis financial awards will be made?

How in the judgment of the Board does this award strategy relate to the achievement of the statutory goal of diversity of technology and resources as well as production?

On what basis has the Board allocated available funds among various feedstocks?

What is the statutory basis for discussions by Synthetic Fuels Corporation representatives regarding financial support for less than commercial scale projects or for research and development and technology development?

How successful has the Corporation been in avoiding unauthorized activities, for example, Energy Mobilization Board type activities?

What is the strategy of the Board for assuring sufficient commitment by the sponsors of synthetic fuels projects to assure completion of the projects selected by the Board to receive financial assistance?

What are the potential antitrust implications of reported discussions between the Corporation representatives and major oil companies regarding joint developmental activities?

These issues dominate our thinking about the Synthetic Fuels Corporation as we receive these two nominees to complete the initial appointments to the Synthetic Fuels Corporation Board. We look forward to their testimony and their commitment to insure fulfillment of our Synthetic Fuels Corporation expectations.

Senator Goldwater had hoped to be able to introduce Mr. Masson. However, due to previous commitments, he will be unable to be present today, but he has submitted a written statement which will be included in the record at this point.

[The prepared statement of Senators Goldwater and Humphrey follow:]

STATEMENT OF SENATOR BARRY GOLDWATER
OF ARIZONA
FOR THE SENATE COMMITTEE
ON ENERGY AND NATURAL RESOURCES

NOMINATION OF MILTON M. MASSON, JR. TO U. S. SYNTHETIC FUELS CORPORATION

AUGUST 12, 1982

Mr. Chairman, it is a pleasure to submit a statement strongly endorsing the nomination of Mike Masson to the Board of Directors of the Synthetic Fuels Corporation. His nomination is one that pleases me very much for several reasons. First of all, his technical background and training eminently quality him to take an active part in the new technology of developing alternative fuels. With his engineering background and his wide variety of experience in the business world, Mike brings to this job a unique set of professional qualifications.

On top of all this, Mike has found time in his busy career to become involved in a variety of charitable, civic and political causes. As the old saying goes, "If you want something done, find the busiest man in town." Mike certainly personifies that. From the Cancer Society - to safe roads - to environmental affairs - to industrial development - to the performing arts, Mike Masson has made his presence felt on the Arizona scene. In all of the causes he has been asked to serve, Mike has achieved an outstanding record of success and public service.

For all of these reasons, Mike will bring not only enthusiasm, but expertise and common business sense to the complex and important work that the United States must undertake to help our nation achieve energy independence.

OPENING STATEMENT OF SENATOR HUMPHREY

GOOD MORNING. I WOULD LIKE TO WELCOME MR. RICHARD TO THE COMMITTEE, AND IT IS MY HOPE THAT HIS NOMINATION WILL BE QUICKLY APPROVED BY BOTH THIS BODY AND THE FULL SENATE. THERE IS NO SHORTAGE OF WORK THESE DAYS AT THE FERC. MR. RICHARD HAS A MONUMENTAL JOB BEFORE HIM, AND HIS PERSONAL AND PROFESSIONAL CREDENTIALS APPEAR WELL SUITED TO THE TASK.

AS CHAIRMAN OF THE SUBCOMMITTEE ON ENERGY REGULATION, I HAVE TAKEN A STRONG INTEREST IN MANY PROGRAMS UNDER THE FERC'S JURISDICTION. SEVERAL OF MY COLLEAGUES HAVE ALREADY MENTIONED THE NATURAL GAS POLICY ACT. I WOULD ALSO LIKE TO DRAW ATTENTION TO THE PUBLIC UTILITY REGULATORY POLICIES ACT AND THE HYDROELECTRIC LICENSING PROGRAM UNDER THE FEDERAL POWER ACT. IF WE ARE EVER TO ACHEIVE A BALANCED ENERGY POLICY, IT IS CRITICAL THAT ALL THESE PROGRAMS BE ADMINISTERED IN SUCH A WAY AS TO MAXIMIZE THE DEVELOPMENT AND USE OF DOMESTIC ENERGY RESOURCES. BE IT OIL AND GAS DRILLING OR SMALL-SCALE HYDROELECTRIC DEVELOPMENT, ALL CONTRIBUTE TO A LESSENING OF OUR FRIGHTFUL DEPENDENCE ON IMPORTED OIL.

I APPRECIATE MR. RICHARD'S EMPHASIS ON BALANCE, COMPROMISE, AND CONSENSUS IN THE ADMINISTRATION OF NATIONAL ENERGY POLICY. CERTAINLY MANY PEOPLE FROM MY PART OF THE COUNTRY, NEW ENGLAND, ARE WORRIED ABOUT RISING ENERGY PRICES. THEY HAVE A RIGHT TO BE WORRIED. NEW ENGLANDERS SPEND A HIGHER PERCENTAGE OF THEIR DISPOSABLE INCOME ON ENERGY -- HEATING OIL, ELECTRICITY, AND GASOLINE -- THAN ANYONE ELSE IN THE COUNTRY. I AM NOT ASKING THAT WE SACRIFICE NATIONAL ENERGY GOALS FOR THE SAKE OF PROTECTING NEW ENGLAND CONSUMERS IN THE SHORT TERM; I DO BELIEVE, HOWEVER, THAT THEIR COLLECTIVE VOICE NEEDS TO BE HEARD IN THE SHAPING OF THOSE GOALS.

AGAIN, I URGE MY COLLEAGUES TO SUPPORT MR. RICHARD'S NOMINATION, AND I LOOK FORWARD TO WORKING WITH HIM IN THE FUTURE.

The **Chairman**. Senator Long and Senator Johnston, a member of this committee, are here to introduce, to make statements with respect to Mr. Richard, and it is a unique pleasure for me to sit across the table from my colleague from Louisiana who is very instructive and helpful on this committee, and it is an honor to have Senator Long here this morning.

Senator Long, I will recognize you first.

STATEMENT OF HON. RUSSELL B. LONG, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator **Long**. Thank you very much, Mr. Chairman. I am pleased to appear here in support of Oliver G. Richard III.

After earning a bachelor of arts and law degrees from Louisiana State University, Mr. Richard worked with a law firm in Baton Rouge, La. He then came to Washington to work as energy legislative assistant for Senator Bennett Johnston. Last August, Mr. Richard returned to Lafayette with a master's degree in taxation from Georgetown University Law Center, and assumed a partnership in the law firm of Hayes, Durio & Richard.

Mr. Richard has extensive expertise in all areas of the Commission's jurisdiction. He is a veteran of the Natural Gas Policy Act of 1978. As a result, he is knowledgeable about Congress recent actions and the historical treatment of natural gas regulation. He is also well versed in issues affecting utilities and consumers as well as those concerning the pipeline transportation of oil and natural gas.

During his tenure in the Senate, many members of this committee had the opportunity to observe Mr. Richard at work. That personal contact allowed the committee to learn far more about this fine young man than I can tell you in a few minutes this morning.

Mr. Chairman, I do wish to add a few comments that I believe will be helpful to the committee in assessing this nomination, perhaps more so for those who are concerned that Mr. Richard comes from a natural gas producing State. It is true that he is from a producing State and that he had worked for a Senator from that same State, but that only tells half the story.

It amuses me that people forget that Louisiana is also a natural gas consuming State. In fact, Louisiana is the largest natural gas consumer in the Nation. Our consumers pay utility bills like everyone else and they scream just as loudly as anyone in the country when they are increased.

Mr. Chairman, the location of Mr. Richard's home is not the issue. It is his knowledge of the complexities of energy, analytical ability, integrity, and fairness that is important.

It is a Commissioner's job to listen to all parties, to critically and fairly evaluate the information, and to make a decision on the best interests of the Nation. I believe Mr. Richard has the ability and the dedication to carry out these responsibilities in a way that will earn him the respect of all those who vote for his confirmation and will be affected by the future decisions of the Commission, and I urge you to support this nomination.

The **Chairman**. Thank you very much, Senator Long.

Senator Johnston?

STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE STATE OF LOUISIANA

Senator JOHNSTON. Thank you very much, Mr. Chairman. This is my first time down in this position. I didn't realize quite what a hot seat this is down here.

The CHAIRMAN. It won't be as hot as you sometimes make it.

Senator JOHNSTON. I'll keep that in mind. Mr. Chairman, there are a lot of unpleasant things we have to do in this job, for example defending the Senate gym on the floor of the Senate, but occasionally a nice, pleasant task comes along and so it is today that I have a very pleasant task, and that is to recommend to you, not to introduce, but to recommend to you my old staffer, Rick Richard, for FERC.

One of the better things that this President has done is select Rick. Most of you know Rick very well. I think he is one of the most popular staffers that has been here among a group very able and a very popular staff. We are blessed on this committee on both sides of the aisle with really good people in that respect, and Rick was simply one of the best.

He has done well in his life. He was editor of the school newspaper, and he was president of the fraternity and he was president of law school. The list of his accomplishments is very long—Outstanding Young Men in America, Who's Who in Colleges and Universities, and many more. But I think he is best known for what he was able to do as a staffer on this committee during one of our most difficult times, one of our most productive times, and times when we had some of the hottest issues.

Rick was on the staff when we had the NGPA in 1978, PURPA in 1978, Fuel Use Act, the Energy Security Act, the Emergency Energy Conservation Act, some other acts—nuclear waste, et cetera—that passed the Senate and didn't pass the House. He along with the staff of this committee worked on virtually every aspect of those difficult, complicated, and for the most part very successful acts. I did not vote for all of them, but for the most part, this committee did great work, and Rick particularly did outstanding work in the energy field.

He has proved his ability, has shown his knowledge. He has gained that knowledge by having been on the firing line. He knows not only what the terms of the particular statutes say, but he knows the political history, the legislative history, the reasons why those compromises were made. And I think equally as important, he knows what all of the political interest groups are. I don't say that in a pejorative way. Special interests are especially interested, for good reason, in energy matters. Those especial interests ought to be respected to the extent that they are legitimate and to the extent that they are coincident with the national interest, and I think Rick knows that. He knows what the consumer interests are, for example, in natural gas. He knows the producer interests. He knows the pipeline interests. He knows the interests of all of those who have such enormous stakes in the work of FERC.

I need add only that he is a man of especially high integrity. I have not the slightest doubt that he will apply first the national interest because as a Presidential appointee on FERC he does not represent me. He does not represent the State of Louisiana. He doesn't even represent this committee, which is kind of a shame, but he represents the Nation, and I have not the slightest doubt that he will apply the national interest in the best way that he knows how.

I don't know of anybody else who is better equipped, who has greater knowledge and ability to apply that national interest and do so in an outstanding manner. So I recommend him, Mr. Chairman, very strongly, to this committee.

The **CHAIRMAN**. Thank you very much. I don't think any nominee of the President could come before this committee with a better set of sponsors than Mr. Richard has this morning.

Are there any questions of either of the Senators?

Senator **FORD**. No. I just have one of the nominees. Do you believe everything they have said about you? If you say no, you're out!

Mr. **RICHARD**. Senator, if he had told me all of that before I left, I wouldn't have left!

The **CHAIRMAN**. Thank you both very, very much. We will get back to you, Mr. Richard, for your statement in just a few minutes.

Thank you, Senator Long, Senator Johnston. Senator Bentsen is here to present to the committee the other nominee from the State of Texas. Senator Bentsen, we note that you are more than welcome here this morning, and we appreciate very much your taking your time to come before the committee to make this statement.

STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM THE STATE OF TEXAS

Senator **BENTSEN**. Thank you very much, Mr. Chairman. I might say that, as Bennett Johnston said ahead of me, some of these things we do in a perfunctory way in our responsibilities, and others we enjoy and do with great enthusiasm, and I do that with John Boyd Carter, Jr.

Jack Carter has been a friend of mine over 25 years. He is a man of great integrity and ability, and he sure doesn't need this job. The only reason that he considers taking it is because of his great interest in his country and his understanding of the problems of the energy resources of our country, what its future will be, and trying to develop as much independence as we can in that regard.

I was thinking about what my staff had written about him, and it didn't really get to what I was trying to say about Jack Carter. Jack Carter is the kind of a man that I would willingly choose to be the administrator and executor of my estate. That is what I think of his integrity and that is what I think of his judgment, and that is what I think of his ability.

Jack Carter succeeds at everything I have ever seen him attempt. We had business relations, and I have known him in a personal way over those years. He was the president of the Texas Fund Associates. He was the managing director of Lehman Brothers for the Southwest. He chaired the executive committee of one of our major banks. He is a senior vice president now of Pogo Co. which is an energy company. He is a man I think who will lean over backward to see that he has no conflict of interest as he works to serve our country.

He is a man who has also contributed of his time and his talents to civic things in our city. He is a trustee of the Museum of Fine Arts. He serves on the Baylor College of Medicine, and Mr. Chairman, members of this committee, I would recommend him without any kind of a reservation. He is a highly capable man, and I would urge your favorable consideration of him.

[The prepared statement of Senator Bentsen follows:]

STATEMENT BY
SENATOR LLOYD BENTSEN
ENERGY COMMITTEE

AUGUST 12, 1982

Thank you, Mr. Chairman, for the opportunity to appear before you today and introduce John Boyd Carter, Jr., my good friend and a distinguished fellow Texan who has been nominated by President Reagan to be a member of the Board of Directors of the United States Synthetic Fuels Corporation. Jack Carter has been my personal friend for over 25 years.

I think the members of this committee will agree that Jack's background and training leave him particularly well-qualified for this important assignment. He is a man of integrity, ability and intelligence.

Jack has attained a great deal of success in all of his undertakings. He began work as a mortgage loan supervisor for American General Investment Corporation, where he remained until beginning work as an independent oil operator. In 1949 he joined with Texas Fund, Inc., serving as Secretary/Treasurer until 1951, and then as a member of the Investment Advisory Board until 1958. During these years Jack also served as President of Texas Fund Research and Management Associates, and continued to work as an independent oil operator. In 1959 he joined Lehman Brothers as the company's Southwestern Representative, and in 1970 was appointed Managing Director. He held this position for seven years until changing to his present position of Senior Vice President of Pogo Producing Company in Houston, Texas.

In addition, Jack serves as Director of several companies, and is the Chairman of the Executive Committee of Capital National Bank, and a Trustee of the Houston Museum of Fine Arts and Baylor College of Medicine.

Having excelled in both the energy and financial communities for over three decades, Jack will bring to the Board of Directors practical hands-on experience that will prove to be a valuable asset as he serves on the Board. In my opinion, he is precisely the sort of motivated, highly-qualified individual who can serve his country with distinction.

It is indeed a pleasure, Mr. Chairman, to appear before you on behalf of such an able nominee. I sincerely hope the members of this committee will agree with my assessment of Jack's credentials.

Thank you very much.

The CHAIRMAN. Thank you very much, Senator Bentsen. Again, it is a pleasure to have you before this committee to give the kind of personal endorsement that you just gave.

It is nice to know that you know Mr. Carter well and can recommend him on a personal basis.

Senator BENTSEN. If the committee would excuse me, I have another committee meeting I must attend.

The CHAIRMAN. Surely. Thank you very much. Mr. Masson, I wonder if you and Mr. Carter and Mr. Richard would all follow me as I go through one set of questions?

All nominees are required by the rules of the committee to be sworn in connection with their testimony. Will you all rise and raise your right hand, please?

[Whereupon, the nominees were duly sworn by the chairman.]

The CHAIRMAN. Thank you. You may be seated. Before you begin your statements this morning, there are four questions which we address to witnesses before this committee who are nominated for positions in the administration or regulatory agencies. I would like to ask these questions of you.

Will you be available to appear before this committee and other congressional committees to represent Corporation or agency positions and respond to issues of concern to the Congress?

[Each nominee responded affirmatively.]

The CHAIRMAN. Your informational statements have been submitted to the committee. However, it is required that your statement be made public unless the committee decides that special circumstances justify an exception.

Do you have any objection to the publication of your informational statement?

[Each nominee responded in the negative.[1]]

The **Chairman**. Are you aware of any personal holdings, investments, or interests that could constitute a conflict of interest or present the appearance of such a conflict should you be confirmed to assume the office to which you have been nominated by the President?

Mr. **Carter**. Should we take these separately, Senator?

The **Chairman**. Yes.

Mr. **Carter**. My investments and personal holdings and other interests have been reviewed by both myself and the appropriate ethics counselors within the Federal Government.

I have taken appropriate action to avoid any conflict of interest, There are no conflicts of interest or appearances thereof to my knowledge, and if any should arise at any time either now or in the future, I will be more than willing to abide by section 118 under the act.

The **Chairman**. Thank you, Mr. Carter. Mr. Masson?

Mr. **Masson**. Senator, I, too, have reviewed by business, corporate, and personal holdings with the appropriate Government ethics counsels and taken appropriate action to avoid any conflict of interest.

Likewise, should any arise when I serve on that board of directors, I will fully comply with section 118(c).

The **Chairman**. Thank you.

Mr. **Richard**. I have submitted to the committee chairman a statement of recusal on a particular issue that might come up at the Commission at some future time. I have a letter that I have given to you for the record. If you would like me to read it, I will be most happy to.

The **Chairman**. I think it might be well to state that for the record.

Mr. **Richard**. This is a letter addressed to you, Mr. Chairman. It says:

> As I have indicated in my Committee information statement, an independent natural gas producer requested in February of this year that I represent him before the Federal Energy Regulatory Commission with regard to a rate refund issue. After reviewing the matter, I referred it to an associate in my law firm, and I have had no further contact with the client. The matter involving the client is now pending before the Commission in Docket No. G-20555. If confirmed I will, of course, recuse myself from any form of participation in this matter.

The **Chairman**. Thank you all three for your responses. Are you or any of you involved or do you have any assets held in a blind trust?

Mr. **Masson**. I do not.

Mr. **Richard**. No, Chairman.

Mr. **Carter**. No, sir.

The **Chairman**. Thank you, all three, for your statements and responses to those questions. We will hear first from Mr. Carter, who has been nominated to be a member of the Board of Directors of the U.S. Synthetic Fuels Corporation.

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[1] The informational statement of Mr. Richard appears as appendix I to this hearing. Mr. Carter's and Mr. Masson's informational statements have been retained in committee files in accordance with committee policy pertaining to members of the Board of Directors of the U.S. Synthetic Fuels Corporation.

Your entire statement will be made a part of the record. You are invited to give it, summarize it, extemporize in whatever way you prefer.

Mr. CARTER. I will try to be brief here.

STATEMENT OF JOHN B. CARTER, JR., NOMINEE TO BE A MEMBER OF THE BOARD OF DIRECTORS, U.S. SYNTHETIC FUELS CORPORATION

Mr. CARTER. Mr. Chairman and members of the Committee on Energy and Natural Resources, I am grateful for this opportunity to appear before you as a nominee to the Board of Directors of the U.S. Synthetic Fuels Corporation.

Over the years I have examined numerous studies on the outlook for energy supply in the United States and throughout the world. One basic tenet lies at the center of all of these studies--oil and gas are finite resourses. Even the most optimistic of forecasts cannot ignore this fact, and while we now enjoy a so-called glut in energy supply, it is inevitable that at some point in the not-too-distant future the depletion of our oil and gas reserves will necessitate the development of alternate sources of energy supply.

Synthetic fuels must play an important role in any projection of future energy supply. With our national abundance of coal, tar sands, and oil shale, the Nation can ill afford to ignore these resources which can provide secure supplies of liquid and gaseous fuels for many years, indeed well into the next century.

The current availability of adequate supplies of conventional oil and gas affords this Nation an opportunity to develop a synthetic fuels industry carefully and without the mistakes which attend a crisis situation. There can be little doubt that given the inevitability of diminished energy reserves in the years to come, the wisdom of developing this industry now will serve to alleviate many of the dislocations which will come when energy demand outstrips supply.

The U.S. Synthetic Fuels Corporation has an extremely important role to play in positioning the United States for the time when we can no longer import or produce the energy we need to fuel our economy and provide for our national security. The Corporation's mission, however, requires a delicate balance of the need to provide adequate protection of taxpayers' moneys against the increasing necessity of developing the capability to produce synthetic fuels in significant quantities and in a timely manner.

If approved by this committee and confirmed by the U.S. Senate, I will strive to see that the Synthetic Fuels Corporation carries out its mission responsibly. I believe that with a great deal of study and many right decisions, the Corporation can be a catalyst which will bring a synthetic fuels industry on line.

As a member of the Board of Directors, I will draw upon my experience as an executive of an oil and gas-producing company, as a past executive of a major investment banking firm, to see that the Corporation makes those right decisions.

Thank you for your consideration. I will try to answer any questions you may have.

[The biography of Mr. Carter follows:]

JOHN BOYD CARTER, JR.

Home: 3682 Willowick Drive
Houston, Texas 77019

Office: 900 Southwest Towers
P.O. Box 2504
Houston, Texas 77001
(713) 651-4300

Education: University of Texas, 1943-1946
Babson College, 1946-1947

Employment Background:

1977-Present; Senior Vice President, Director, Pogo Producing Company, Houston, Texas

1959-1977; Lehman Brothers;
Southwestern representative, 1959-1965
General Partner, 1965-1977
Managing Director, 1970-1977

1952-1958; Independent oil operator and financial consultant

1950-1952; President, Texas Fund Research and Management Associates

1949-1958; Texas Fund, Incorporated;
Secretary/Treasurer, 1949-1951
Member, Investment Advisory Board, 1951-1958

1948-1949; Independent oil operator

1947; Mortgage loan supervisor, American General Investment Corporation

Director, Chairman Executive Committee, Capital National Bank
President, Director, Prescott Ranch Company
Director, Marine Service Corporation
Director, American Marine Corporation
Director, Sea Drilling Corporation
Trustee, Houston Museum of Fine Arts, Baylor College of Medicine

Memberships: Independent Petroleum Association of America
Texas Independent Producers and Royalty Owners Association
Houston Society of Financial Analysts
Houston Committee on Foreign Relations
Sigma Alpha Epsilon

Personal: Married, 2 children

The **Chairman**. Before proceeding to the questions, Mr. Carter, from other members of the committee, we will also hear from Mr. Masson, and we can address questions to both with respect to the Synthetic Fuels Corporation. Is that satisfactory, Mr. Masson? We appreciate it.

Mr. **Masson**. Thank you, Senator.

STATEMENT OF MILTON M. MASSON, JR., NOMINEE TO BE A MEMBER OF THE BOARD OF DIRECTORS, U.S. SYNTHETIC FUELS CORPORATION

Mr. **Masson**. Mr. Chairman and distinguished members of this committee, I am honored to appear before you today as a nominee to the Board of Directors of the U.S. Synthetic Fuels Corporation.

When I first learned of my nomination to the Board of Directors of this Corporation, I carefully considered how my experience and background might contribute to this important effort. As a professional engineer licensed in 10 States, I have had a number of first-hand experiences with energy projects, the finance industry, and issues facing the development of this industry.

My career has involved me in large engineering and construction projects, energy and utility projects, land development and community activities as well. All of this I believe will be relevant and beneficial to me as a member of the Board of Directors.

With the passage of the Energy Security Act of 1980, and the creation of the U.S. Synthetic Fuels Corporation, a firm commitment was made to reducing our dangerous dependence on imported energy through the development of a synthetic fuels industry. The risks inherent in developing this industry are as great today as they were when the Energy Security Act was passed, but as the lessons of the energy crisis and recent developments in the Middle East carefully illustrate, the gains to our continued industrial growth and national security will far outweigh the risks associated with bringing this industry on line. Few corporations in the United States today can assume, on their own, the financial commitment needed to build and operate first-of-its kind synthetic fuels plants. This fact is perhaps even more true today than it was 2 years ago.

The financial assistance provided by the Synthetic Fuels Corporation will be the key to bringing this industry on line. By carefully commiting its resources to strong projects, the Corporation will demonstrate once and for all that the United States has both the will and the know-how to produce for itself the energy to heat its homes and fuel its industries.

I fully intend, if approved by this committee and confirmed by the full Senate, to do whatever is necessary to help insure that the Synthetic Fuels Corporation carefully and deliberately carries out the mandate set down by it in the Energy Security Act.

I am grateful for this opportunity to appear here today before this Committee, and I would be happy to answer any of your questions.

[The prepared statement and biography of Mr. Masson follow:]

OPENING STATEMENT

by

Milton M. Masson, Jr.,
Nominee to be Member of the
Board of Directors
U.S. Synthetic Fuels Corporation

Before the

Committee on Energy and
Natural Resources

U.S. Senate

August 12, 1982

Mr. Chairman and distinguished Members of this Committee, I am honored to appear before you today as a nominee to the Board of Directors of the United States Synthetic Fuels Corporation.

Two years ago, the Congress and many Members of this Committee, pledged the United States to an energy future more secure than its past. With the passage of the Energy Security Act and the creation of the United States Synthetic Fuels Corporation, a firm commitment was made to reducing our dangerous dependence on imported energy through the development of a synthetic fuels industry.

The risks inherent in developing this industry are as great today as they were when the Energy Security Act was passed. But as the lessons of the energy crises and recent developments in the Middle East clearly illustrate, the gains to our continued industrial growth and national security will far outweigh the risks associated with bringing this industry on line.

Few corporations in the United States can assume, on their own, the financial commitment needed to build and operate a synthetic fuels plant. This fact is perhaps even more true today than it was two years ago. The financial assistance provided by the Synthetic Fuels Corporation will be the key to bringing this industry on line. By carefully committing its resources to strong projects, the Corporation will demonstrate once and for all that the United States has both the will and the know-how to produce for itself the energy to heat its homes and fuel its industries.

When I learned of my nomination to the Board of Directors of the Synthetic Fuels Corporation, I carefully considered how my experience and background might contribute to this important effort. As a professional engineer licensed in ten states, I have had a number of years of first hand experience with energy projects, the finance industry, and issues facing the development of this industry. My career has involved me in the engineering and construction business, land development and community activities. All of this will, I believe, be both relevant and beneficial to me as a member of the Board of Directors of the Synthetic Fuels Corporation. I fully intend, if approved by this Committee and confirmed by the full Senate, to do whatever is necessary to help ensure that the Synthetic Fuels Corporation carefully and deliberately carries out the mandate set down for it by the Energy Security Act.

I am grateful for this opportunity to appear before this Committee and would be happy to answer any questions.

M. M. "MIKE" MASSON, JR.

Home: 4535 E. Joshua Tree Lane
Paradise Valley, Arizona 85253
(602) 952-0236

Office: 725 W. McDowell
Phoenix, Arizona 85007
(602) 257-8525

Education:

Bachelor of Science, Electrical Engineering
Christian Brothers College
Graduate Studies, Business & Economics
University of Missouri

Professional and Business Activites:

1981-Present; General Partner, Saguaro Lake Marina, Inc.

1980-Present; Chairman of the Board, SMCM, Inc.

1969-Present; Executive Vice President and Treasurer, Sullivan & Masson Architects-Engineers

Related Professional Experiences:

Mr. Masson has 20 years of engineering, management, and political experience which spans a career beginning as a Design Draftsman, Engineer-in-Training, Design Engineer, Project Engineer, Manager of Marketing, Finance Director, and Principal of Sullivan & Masson, Inc. His graduate training in business management, his marketing training with Westinghouse, his experience managing major industrial projects, and his varied political and community leadership experiences all add to his capabilities to provide leadership to assure top performance.

Professional Activities:

National Society of Professional Engineers

Arizona Society of Professional Engineers

Arizona Consulting Engineers Association

Illuminating Engineers Society

Arizona Electric League

Community Activities:

Past President and Treasurer of Arizona State Chamber of Commerce (Founding Board Member)

Past Chairman, Environmental Affairs Committee, Phoenix Metropolitan Chamber of Commerce

Past Executive Vice-President, Proper Environmental Planning

Past Secretary, Arizona Safe Roads Committee

Past Member, Phoenix Urban Form Committee

Member, The Arizona Academy

Member, Valley Forward

Past Board Member, Phoenix Men's Symphony Council

Member, Arizona Association of Industrial Development

Member, Chapparal Christian Church

Past Chairman, Phoenix Crusade Committee, American Cancer Society

The **Chairman**. Thank you very much.

Mr. Carter, you have been involved in the energy industry and you have been involved in the financial community.

We are hearing a lot of people around the country who today say well, we have got a glut of energy supplies today. We don't need to be so concerned about the future of the energy supply in this country.

How would you respond to that?

Mr. **Carter**. Senator, I think this glut will have a relatively short life. Most of the indepth economic studies that I have seen show that for the first time in this century the supply of worldwide energy will not be able to meet the market demand probably within the next 6 to 10 years.

Now this will not be caused by political actions which we have seen recently in the past. This is going to be a fact of nature. The type of program we are talking about to supplant the natural oil and gas production of the world is synthetic fuels. These projects often take from 6 to 10, maybe even 15 years leadtime to come about. We have to get this show on the road right now and be ready for when this energy shortage happens and it will come about.

The **Chairman**. In the same vein, Mr. Masson, you touched on it. Assuming that everything Mr. Carter says is correct, that we are experiencing sufficiency of supply today relative to demand but that we will need an alternative to conventional oil and gas within the next decade, why can't we simply rely upon the economic marketplace to develop the technology and deploy the facilities to meet that need when it is expected?

Mr. **Masson**. Senator, I think that requires a two-part answer. First of all, if we wait until we have an economic condition where the price of energy is such that it is economically feasible, we are going to need those resources before the 10 to 12 years leadtime necessary to get this industry developed are up. The second reason which I think is probably more important is that whenever this industry starts, because of the high risk associated with one-of-its-kind large multibillion dollar synfuel projects, there will always be a few corporations that will want to answer to their stockholders in taking that first-of-a-kind risk, therefore necessitating the participation of the U.S. Synthetic Fuels Corporation or same other Government agency to reduce the financial risk.

The **Chairman**. Congress has identified areas in which the Corporation was not to become involved. I don't know of any piece of legislation that was more carefully hedged in than that which creates the Synthetic Fuels Corporation. We outlined where the Corporation should be involved. We also said very carefully where it should not be. We have established priorities. We have set up a number of thou shalts and thou shalt nots. In some instances, explicit limitations were imposed on the powers and authorities of the Corporation, for example, the close restriction on the powers of the Corporation to the provision of financial assistance to synthetic fuels projects.

Enforcement of the act is provided by means of suits by the Attorney General or Comptroller General. Both criminal as well as civil sanctions against the directors, officers and employees of the

Corporation are provided where there is a violation of the provisions of this act. Inclusion of these provisions played an important role in achieving the ultimate congressional compromise creating the Corporation, and they must, I repeat, must be strictly enforced and satisfied.

In this regard, the committee received assurances from the present Board members that they would not enter into certain types of activities. The activities of concern to the committee were earlier attempts by the Corporation to enter into Energy Mobilization Board type of activities for which statutory authority does not exist in the Energy Security Act.

For the record, I will ask each of you if you understand both the restrictions that are expressed in the act and the fact that there are civil and criminal penalties involved for violation of those restrictions?

Mr. **Carter**. Senator, I can assure you that you and your staff on this committee certainly have my attention, and I will commit this act to memory, and if there is ever any doubt I will come to your counsel and we will find out whether I am acting in the right way.

The **Chairman**. Mr. Masson?

Mr. **Masson**. Senator, I, too, have carefully reviewed that act and continue to do so. I am quite aware of the fact it has been very carefully carved out with very limited and specific responsibilities and authority, and I assure you as a Board member that I will take that seriously at all times, and stay within those limits.

The **Chairman**. Thank you very much. Senator Johnston?

Senator **Johnston**. Thank you very much, Mr. Chairman. First, let me welcome these two fine nominees to the committee. Let me also say that the synthetic fuels legislation which this committee handled all the way through is in my judgment one of the better pieces of legislation that we turned out. I think it was well thought out. I think the mechanisms are very workable. The goals of 500,000 barrels a day by 1987 are undoubtedly not achievable. I think 500,000 by 1987 and 2 million by 1991 are probably not achievable because of the inordinate delay which has attended the creation and setting up of this Synfuels Corporation.

Nevertheless, the framework, the machinery, the structure of the Corporation I think is very sound. This Congress and clearly this committee as you have heard our chairman say and as I want to underline, is very committed to synthetic fuels. We very carefully structured a set of priorities in designing the ways in which the money already appropriated is to be spent and used. We want minimal amount of Federal intrusion, but nevertheless, we want whatever it takes to get the synthetic fuels business off the ground. If it takes a lot of Federal money, well, consistent with the act, we have appropriated that money.

We wanted very much to see that this Synthetic Fuels Corporation was adequately funded and insulated from political ebbs and flows, from changes in administration, from temporary changes in the world oil market, temporary oil gluts, temporary fads, and we have had a lot of fads since the original 1973 Yom Kippur war and the first so-called oil shock. In effect you are to be above politics with a tunnel vision to get those synthetic fuels projects on line.

I want to say I like very much your answers to the chairman's questions, your appreciation of the big picture of energy, your understanding of the private sector, and that under the Synthetic Fuels Act, the private sector is meant to be the principal engine of the synthetic fuels industry. But that you understand that we are not going to get it off the ground, initially at least, without some Government involvement because the risks are just too great. If Exxon can't do it, then nobody can. I am not suggesting we should immediately take over the Exxon project, but I am saying that whatever is necessary to get the projects going, let's do it.

I think you will be joining a good Synthetic Fuels Board. I think Chairman Nobel and others have really worked hard and have invested a tremendous amount of their time and efforts in learning the business. I think they have a lot of enthusiasm for this act and its application. I look forward to you joining them and breathing life into the structure and the purposes of the Synthetic Fuels Corporation.

I will vote for your nominations, and I hope that your performance will be as good as the promise shown on your background and in your statements.

Thank you, Mr. Chairman.

The **Chairman**. Thank you, Senator Johnston.

Senator Domenici?

Senator **Domenici**. Thank you, Mr. Chairman. The two nominees of the Synthetic Fuels Corporation, first I want to welcome you here. I wasn't here when our distinguished chairman made his opening remarks and asked his questions. I don't intend to ask any technical questions about the Synthetic Fuels Corporation and its goals, but it is true that this Corporation with its Board and Chief Executive Officer, are supposed to be independent and are supposed to accomplish the goals of this Corporation.

Nonetheless, the President of the United States is given the authority to nominate you. He doesn't run this Board. You do.

On the other hand, I wouldn't approve you, I wouldn't vote for you just because he sent you up here unless you were committed to make the Synthetic Fuels Act goals operative and see that it carries out what the Congress in that Synthetic Fuels Act said this country was going to do, and we haven't changed that yet.

I think it is pretty obvious that if this committee has anything to do with it, we are not going to change it at least for now, so I just want to ask each of you, you are committed to see to it that the Synthetic Fuels Corporation does what Congress said it was supposed to do, is that correct?

Mr. **Carter**. Yes, sir, that is certainly correct. I am more than willing to dedicate my time and efforts to follow the outline as set forth by Congress, and I just think it is imperative that this country get something done in this field.

Senator **Domenici**. Mr. Masson?

Mr. **Masson**. Senator, likewise; not to be trite, but I am not up here to help attend a funeral, I think it is time we get the show on the road, that is what I want to do, and I want to dedicate all of my efforts to do so.

Senator **Domenici**. I do want you to know that we worked very hard on that legislation. Some of the people who are right here spent upward of 6, 7, 8 months putting it together, and we withstood some significant attacks and some frivolous attacks, some exaggerations and some realistic assessments of concern. It was brought into being in a time of more concern of oil and oil adequacy than now, but we are not so stupid as to think that this glut is a forever situation, and we are not so stupid as to want to see huge American resources that come supplant and take the place of oil sit around and waiting for somebody to cut us off again and get on some crash program when we have set this in motion to do some realistic commercial assistance to get technology and the infrastructure necessary that I am hopeful that we never would need it, but the facts clearly indicate that—I have seen no projections by anybody that say America is going to be adequate without significant synthetic fuels sooner or later.

In fact, I am amazed by some of the major corporations in this country having 10, 12 percent of our production in 20 years of our use being synthetic fuel, and yet we sit around and assume that is going to happen the year before the projected need.

On the other hand, if there is something in the law that is not workable or if the facts are wrong, I assume we stand ready to listen in an oversight capacity, but not from this Senator's standpoint—I don't want Board members going there with an attitude of trying to find ways to make it not work. Maybe you have told me you are not going to do that. I think you have said that unequivocally. I hope that is the case.

With that, your backgrounds are tremendous. Your people that testified on your behalf are stalwarts. I just wish you luck. I am going to vote for you and hope we get the thing going.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Ford.

Senator FORD. Thank you, Mr. Chairman. The questions that have been asked and the statements that have been made are certainly sufficient for me.

I have had the opportunity to visit with both these gentlemen, and I think Mr. Masson's statement that he didn't come to Washington to preside over a funeral or attend a funeral is something I like.

For over a decade now I have been working diligently in the field of synthetic fuels. It has taken a long time for it to come. Hopefully it will arrive. The feeling from these two gentlemen as I got it from our conversation is that the Synthetic Fuels Corporation needs some stability now, to give confidence to industry that they are there to support and see that this project goes forward as mandated by Congress.

I am pleased with their attitude. I am pleased with the direction I think they want the Corporation to go in. Mr. Chairman, I am delighted with their qualifications, with their attitude, and I look forward to supporting their nominations.

Senator DOMENICI. Mr. Chairman, could I just take one more moment? Mr. Chairman, I want to, as a member of this authorizing committee, to extend my compliments to you, Mr. Chairman, and to you, Senator Johnston, as members of the Appropriations Committee. I know we have this commitment that sits there in the appropriated account for this, and I know that everybody looks around to see if they can, before it ever gets a chance, take it away, and I want to just say to you as a nonmember of your committee I stand ready to do whatever I can to help you in leaving that commitment there until we see yes or no whether it is needed and whether it will work, and I hope remain committed because I understand about every 6 months somebody is looking for the budget authority that is in that to see if they can't build more houses for the country or God knows what.

You can't do any of those things without fuel, but that doesn't seem to bother anybody, so I compliment you and tell you I am on your side 100 percent.

The CHAIRMAN. Well, I know that with you as chairman of the Budget Committee we have no fear for the budget.

Senator DOMENICI. And to the extent that I have a chance to talk with His Honor Mr. Stockman before he sends the budget up, I remind him of that also. I want you to know that.

The CHAIRMAN. I think the comments that have been made here by members of the committee underscore what is the commitment of this committee and has been the commitment of the Congress.

I note, as I did in my opening statement, the article that appeared in the Wall Street Journal, and I think they paint a very misleading picture of what congressional support is. They pick the statement of two Members of the House of Representatives who are opposed to the Corporation, who want to take the money away from it. That is nothing new. They never were for it, so I don't regard that article as being anything more than a forum for a minority view. Maybe the Wall Street Journal shares that particular point of view, but the Congress as a whole does not, and I would be surprised if the Wall Street Journal holds that point of view, but they have to fill the pages with something, and that is not as bad as some.

Senator JOHNSTON. It sure isn't.

The CHAIRMAN. So I don't regard it nearly as seriously as I do the fact that there is an administration review of the purposes of the Synthetic Fuels Corporation, and a Cabinet Council review underway, and certain recommendations to the President, certain options that have been outlined that may be presented to the President. I hope whoever is selecting among those options is listening or will hear because among those options is conversion of the Synthetic Fuels Corporation into an R&D organization so that we move everything from out of the current R&D program over into synthetic fuels.

I think any reading of the act or of the legislative history would indicate that is precisely what the Congress avoided and intended to avoid. This is not an R&D program. It is to demonstrate technologies. The R&D comes somewhere else. They always move from laboratory experiments into R&D programs, into demonstration and commercial application. We are trying to get that just immediately prior to the commercial application and demonstrate how they work at full scale and demonstrate both the technology and the economics of that operation so that the next step, which is the commercialization, then can be taken with full confidence in the private sector. Not that we expect Government to do it, but we expect Government to have demonstrated what the strengths and weaknesses of technologies may be both in a technological sense and in a financial sense.

The second option, another option, that has been outlined is the possibility of Presidential direction of the Synthetic Fuels Corporation. Senator Domenici, I think you said it very well. The President may nominate, but the President does not direct. Under that legislation, the White House might well suggest changes in the law, but I would suggest that they would be ill-advised to try that, so I don't believe Congress is very likely to quickly change that law in that regard.

I mention that only because there are critics of the Synthetic Fuels Corporation idea. They have been around a long time. They did then represent a minority view. I believe they do now represent a minority view. That is the reason that I asked the questions I did, at the outset, of both you gentlemen about the need for a program and the opportunities to have it done in the private sector. I think the responses that each of you have given would indicate that indeed such opportunities are still going to be best met by an active synthetic fuels program, and the SFC is the best vehicle for that program at the present time.

Some people have pointed to the fact that private enterprise has withdrawn from the field and say, well, that is proof that it is not needed. I think it proves just exactly the opposite, that if we are going to have any movement forward in this area over the next few years, it has to be in a program of the kind that is outlined under the synthetic fuels authorization act.

Thank you, gentlemen, very much. I wish you well as you undertake your obligations. I don't think that I foresee any problems either in this committee or on the floor for your nominations. If there are any, I haven't heard of them.

I think it is worth noting we have a man deeply involved in the energy industry, in the financial industry, and a man who is an engineer who has been involved in that, both of whom have experience, have clients and contacts and friends in the energy industry. Some people might take that as a condemnation of the nomination. We expected that to be done and set up a very, very careful procedure to avoid the conflict of interest because we wanted to have people who knew what we were doing. This is not a place for on-the-job training on board the Synthetic Fuels Corporation, and I appreciate that the President has indeed selected men of competence and background and experience for these positions.

I wish you both very well as we move forward. Do you have any family here today?

Mr. CARTER. No, sir, not today unfortunately, but they will be here if I pass.

The CHAIRMAN. We hope you pass, and we hope you have got your invitation out.

Mr. Masson, do you have your family here?

Mr. MASSON. No, Senator—likewise. They are planning to come later.

The CHAIRMAN. Thank you very much. We will look forward to meeting them when they are here.

Senator FORD. That's like attendance for a winning ball game.

Mr. **Carter**. They didn't show much faith in us, did they?

Senator **Ford**. Maybe they know you best. I want to tell you, Mr. Chairman, they have good humor. As long as they keep that, I believe they're going to be all right.

The **Chairman**. Thank you. If there be no reason for these two gentlemen to stay, they can be excused.

Mr. **Masson**. Thank you.

Mr. **Carter**. Thank you, Mr. Chairman.

The **Chairman**. Thank you both for your appearance here today. We will now hear from Mr. Richard.

Mr. **Richard**. Thank you, Mr. Chairman. Out of an abundance of caution, I have asked my parents, wife, friends to come up today for the hearing.

The Chairman. You may need all the help you can get.

STATEMENT OF OLIVER G. RICHARD III, NOMINEE TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Mr. **Richard**. Mr. Chairman and members of the committee, I am pleased to appear before you today as the President's nominee for the remaining seat on the Federal Energy Regulatory Commission.

This is one of the most important events in my life. One does not chance into such an honor. It results from having parents that encourage characteristics such as integrity and hard work. My parents are here today, and although I have said it privately many times, I would like to thank them publicly for all their love and guidance.

Also, Mr. Chairman, my wife Donna is present. My being here today has much to do with the love and support she gives me. She is like a good utility forecaster. She is always there for my peaks and lows.

Also, Mr. Chairman, my senior partner from Lafayette has come with his wife, Jimmy and Leslie Hayes. They have been very supportive during the nomination process. I would like to recognize them, and two of my very good friends from New Orleans are here. They are the parents of Joshua, my Godson. They wanted to come up and check me out, to make sure they made the right decision.

My background and experience are relevant to my appointment. I am an attorney with a masters in taxation from Georgetown and except for a short time in private practice, my professional career has been devoted to Government service as a legislative assistant in the Senate in the field of national energy policy.

During my 3½ years working in the Senate I was intimately involved in the debate on national energy issues. Most of the acts are administered either solely by FERC or by the FERC in conjunction with other departments. These include the Natural Gas Policy Act, Public Utility Regulatory Policies Act, Fuel Use Act, and the oil backout bill.

During my tenure, Mr. Chairman, my duties invloved analyzing questions of national energy policy. National policy does not stand in a vacuum, devoid of particular regional considerations. The mosaic is made up of many pieces of unique regional characteristics.

As an energy adviser to Senator Johnston, I became aware of the diversity of regional perspectives. As importantly, I came to recognize the importance and indeed the obligation for decisions regarding national policy to be made so as to balance interests from all parts of the country.

A commitment to consider all interests and points of view flows from my work as a Senate staff adviser. I have met informally with about 20 staff members from the Midwest-Northeast Institute about my nomination, and believe that I have put to rest many of their fears regarding a regional bias.

I also should point out that if confirmed, I will vote as a FERC Commissioner along with four others. The Commission acts as a collegial body. Anyone attending Commission meetings can observe that on virtually every issue healthy differences of opinion exist. Mr. Chairman, I am both healthy and different.

Mr. Chairman, these regions or States are foremost a United States, and I am foremost one of her citizens. It should be remembered that Louisiana is not only the largest single State supplier of natural gas interstate, but it is ranked third in consumption. Consumers, residential, industrial, or commercial, in Louisiana are affected by rising energy prices as much as anyone. One only need to ask my wife, parents, or friends from Louisiana about the rising energy costs.

I have never judged any issue solely on the basis of regional implications but on what is best for the country in the long term. An independent Commission means independent judgment by its Commissioners. I will not and could not take this charge lightly.

Finally, Mr. Chairman and members of the committee, I believe that the Commission faces a number of significant challenges over the next few years. As the debate over natural gas policy makes clear, the rising price of gas under existing law has the possibility of effecting drastic changes in the way natural gas has been marketed in this country. One only needs to look at the testimony of the Sharp natural gas hearings in the House to realize the complexities involved. Fundamental changes, much like that which hit the electrical utility industry after the oil embargo of 1973, require an independent, knowledgeable Commission to work with all parties, including most importantly the Congress, during these transitory times.

I also believe more than ever before that the FERC must affirmatively reach out for input from the State utility commissions to insure that their views are known and considered on issues that affect the retail price of energy.

Other issues like oil pipeline ratemaking, hydropower licensing, electricity rate issues, including cogeneration and strict enforcement of existing laws immediately command the fifth Commissioner's attention. I believe I have the professional competence, sense of fairness, independent judgment, and most of all, good sense, to fill that slot. Should the Senate see fit to confirm me, I am most anxious to start work.

Thank you, Mr. Chairman.

[The biography of Mr. Richard follows:]

BIOGRAPHY

Oliver G. Richard III

Oliver G. (Rick) Richard III has been nominated by the President to be a Member of the Federal Energy Regulatory Commission for a term expiring October 20, 1985. He would fill the seat vacated by Matthew Holden.

Currently, Mr. Richard is a partner in the law firm of Hayes, Durio and Richard in Lafayette, Louisiana.

Mr. Richard served as Energy Legislative Assistant to United States Senator J. Bennett Johnston from 1977 to 1981. In this position he worked on President Carter's National Energy Plan including the Natural Gas Policy Act, the Fuel Use Act, the Public Utility Regulatory Policies Act, the Snythetic Fuels bill, and the Emergency Conservation Act.

In 1977, Mr. Richard was an attorney with the firm of Sanders, Downing, Kean and Cazedessus.

Born in Lake Charles, Louisiana, he graduated from Louisiana State University with a Bachelor of Arts degree in 1974. He received a Juris Doctor degree from Louisiana State University in 1977. In 1981, he graduated from Georgetown University with a Master of Laws in taxation.

Mr. Richard and his wife, the former Donna Margaret Guzman, reside in Lafayette, Louisiana.

The **CHAIRMAN**. Thank you very much.

Senator Johnston?

Senator **JOHNSTON**. Thank you very much, Mr. Chairman. I don't know that I have any questions for Rick. I would just simply recall the fact that one of my very best friends was a district judge back in Shreveport, La. I think you know who I am talking about—one of the best judges we ever produced. He went on to be in the Court of Appeals and later on the Supreme Court—a very close friend of mine with a great deal of integrity—so much integrity that he leaned over backward not to show his favoritism. In fact, he leaned over so far backward that every time I came before his court he ruled against me.

Now I just don't want you to be so overtaken with this integrity business that you don't call them down the middle. As I said before, you have as much integrity as anybody I know, and in all seriousness, I urge you to apply the national interest. Don't lean one way or the other out of defense or out of offense. I think you will do that. I guess that is not a question, but you can comment on that if you like.

Mr. **RICHARD**. I might add that you're in big trouble.

Senator **JOHNSTON**. That's what I was afraid of.

The **CHAIRMAN**. Thank you. Senator Domenici, do you have any questions?

Senator **DOMENICI**. I talked to Rick in preparation for this hearing, and I told him I didn't know any reason to be against him after studying the facts, but I forgot, Mr. Chairman, that he used to work for Bennett. As a consequence, I think we ought to have a very in-depth, detailed hearing. I have many questions to ask of him.

Really I wanted to just say again as I did on the previous nominees that I compliment the President for the quality. I think it is an excellent nominee, and I look forward to whatever questions others have and reserve the right to have some later, but I don't have any at this point.

I think it is very good that you take this job seriously enough to have your wife, your family and your good, close friends here. The more of that we have in Government, the better, and it is a good sign that you have them here supporting you even after you lived and worked here for quite a while.

Thank you, Mr. Chairman.

The **CHAIRMAN**. Thank you, Senator.

Senator Ford?

Senator **FORD**. It's awful hard to follow that act, Rick. Mr. Chairman, as all of us have, I worked very closely with Rick during some pretty traumatic times related to the Senator representing a consumer State. I think I understand his integrity and his desire to bring balance.

Any time you want to rule for coal against Louisiana, you may do that, Rick. It won't bother me any at all. And I think that the statement by the distinguished Senator from New Mexico that your family is here supporting you, that is significant, and I look forward to you being a good Commissioner.

In our conversation of recent date, going over some of the matters, you convinced me more that you will be a good Commissioner.

I look forward to, as you said, an open-door policy to discuss with us the things that seem to be gnawing at us and find a solution in the best interests for both sides of the question.

Mr. Chairman, I look forward to supporting Rick. I don't believe anybody will find anything wrong with him personally or his qualifications. If they find anything wrong with him he just has to be a southener, and that ain't all bad.

The **CHAIRMAN**. Senator Heinz?

Senator **HEINZ**. Mr. Chairman, first of all, I have had a chance to spend some time with Rick and the fact that he is sponsored by Bennett Johnston doesn't weigh heavily against him. He is everything I think that, in terms of his personal qualities, that people have said about him. He is able. He is bright, and he has integrity.

My concern is with what he believes to be the policy implications of his job, and I have some concerns based on what FERC, he as a Commissioner of FERC, might intend to do about the implementation of the NGPA, Natural Gas Policy Act.

At the present time, that act provides for total decontrol by 1985 of gas committed to interstate pipeline since 1977. This represents from 50 to 60 percent of the total gas supply. The gas committed to the interstate market prior to that date is supposed to remain under price controls so the act was a compromise between the consumer States and producing States, and the basic policy is essentially one of gradual decontrol.

Now at this point in time, Mr. Chairman, FERC seems to be moving ahead to a policy of decontrol of natural gas through a series of administrative rulemakings which could very significantly raise the price of natural gas to the consumers.

I have got great reservations about those rulemakings that seem to be underway.

[Brief pause in the proceedings.]

Senator **HEINZ**. It must be Senator Proxmire checking up on Senator Johnston's third gymnasium, or a steam roller coming through.

Senator **FORD**. I might say to the distinguished Senator from Pennsylvania they are closing Proxmire's gym in this building and making an office for him.

Senator **JOHNSTON**. Strike all that. I don't want to talk about that.

Senator **HEINZ**. Mr. Chairman, I'm sorry I brought the subject up. Can we have order?

Now some people have suggested that one rationale for this movement is we could have some problems in 1985 when a number of controls on gas will end, and there might be a sharp increase in price, and that the way to respond to this is to just decontrol faster right now, and I would suggest that is not the only option.

One other way, and I think even Jim Edwards has suggested this, would be to decontrol slower but by stretching it out from 1985 through 1986, 1987, as a way of solving that problem. I am frankly very concerned about the notice of inquiry of April 28 issued by FERC, and one of the reasons I am concerned is some of the potentially devastating impact that you could have in my home State.

Overall, one estimate that was put out by the Citizen/Labor Energy Coalition is that the country would face as a result of that notice if it went into effect, there could be gas price increases to consumers totaling between $21 and $48 billion over the next 3 years. What that would mean for the average gas consuming household would be an increased cost of between $300 and $380 per household per year.

I would like, Mr. Chairman, the article from the Wall Street Journal of February 12, 1982, entered into the record which says in part natural gas decontrol will be an added handicap to the steel industry's struggle against foreign competition. One of the reasons it will be a handicap is that it will vastly increase costs. It will increase costs at a time when the industry simply can't afford to do something maybe it should have done years ago which is it can't afford right now to invest in continuous casting, to invest in all the other energy-efficient mechanisms that we have to have in order to have a competitive steel industry.

[The article follows:]

[Wall Street Journal, Feb. 12, 1982]

AS CONTROLS ARE EASED, INDUSTRIAL USERS BRACE FOR RISES IN GAS PRICES—U.S. STEEL REVERSES ITS POLICY, SEEKS TO SUBSTITUTE COAL; NO CHOICE FOR GLASS PLANT—SOME SEE LONG-TERM GAINS

(By Steve Mufson)

NORTH BERGEN, N.J.—Oil prices may have leveled off, but U.S. industry can expect little, if any, relief from steeply rising energy bills.

Prices of natural gas—the budget fuel—are on their way up, as federal price controls are gradually lifted over the next three years. The increases will be sharp and painful—particularly for large consumers like the steel, automobile, textile, china, glass and container industries.

Some companies have no choice but to use natural gas in their manufacturing processes. For others, the only alternative is costly conversion to other fuels. For many, the added cost of natural gas could take a critical bite out of recession-battered profits.

U.S. Steel Corp., for example, expects over the next three years a doubling of its current natural-gas bill of $400 million to $500 million. Last year the company earned $504.5 million. Natural-gas price increases will make "one more dent in steel-company margins that are already very problematic," say Jospeh Wyman, a steel analyst at Shearson/American Express Inc.

THE BURDEN OF DECONTROL

Nowhere are the burdens of natural-gas decontrol more evident than at Owens-Illinois Inc.'s glass-bottle factory here. The plant has already had to close one of its four furnaces because of the sluggish economy, a decision that involved the layoff of 120 employes last March. Higher gas prices are "the very last thing we need right now," says John Elliot, the plant's personnel manager.

In each of the three gas furnaces still operating, 150 tons of sand, limestone and soda ash blow about in the scorching 2,500 degree heat. Later, the mixture emerges as molten orange globs that slither through machines that shape them into bottles, a total of two million a day. These bottles which can be crushed between two fingers, must under go a second firing in huge gas ovens for strength.

Natural gas is the only suitable fuel for this manufacturing process. It allows for the most precise control of the over temperature, and it is the only fuel clean enough to come into contact with materials used for beverage containers. Despite conservation efforts at this plant and others, the company's natural gas bill has jumped to $125 million a year from $26 million in 1972.

EXTRA SQUEEZE ON PROFITS

Oil refineries, too, are vulnerable to new price increases. Between 40 and 50 U.S. refineries have closed in the past year because of weak demand for refined petroleum products. Now, natural-gas costs will put an extra squeeze on profits. Exxon Corp. says its fuel costs now account for half of a refinery's operating costs, up from 35 percent in 1973, even though its total fuel consumption has been cut by one third during that period.

The Reagan administration is considering speeding up the rate of natural-gas decontrol. Federal regulations currently hold the price of gas well below that of other fuels. Even without new administration inspired legislation, the Natural Gas Policy Act of 1978 calls for complete decontrol of about 40 percent of the nation's natural gas by 1985, with the rest to increase in price at a rate somewhat faster than inflation.

"Industrial users are going to get whacked hard," says L. William Sessions, the vice president of energy and environmental quality at American Can Co. American Can's containers are used for food and beverages, and natural gas is the only fuel clean enough to use in their manufacture.

Natural gas accounts for 20 percent to 25 percent of operating costs at some American Can plants, Mr. Sessions says. With this rivaling labor costs, energy efficiency has become as important as labor productivity at American Can facilities.

LABOR PRODUCTIVITY REDUCED

Energy-conservation measures actually retard gains in labor productivity, according to Dale W. Jorgenson, a Harvard University economics professor. In an analysis of the performance of 35 industries since 1973, Prof. Jorgenson found that those most dependent on energy had slower increases in productivity.

Not only do companies invest in energy saving—rather than labor-saving—machinery, he explains, but some industries substitute labor for energy. Thus, to save fuel, planes fly more slowly, truckers drive more slowly, and during the summer, air conditioning is turned down. All these measures reduce labor productivity.

U.S. Steel, probably the largest single consumer of natural gas in the U.S., is trying with some success to conserve fuel of all kinds. Since 1975 the company has cut by 13 percent the amount of energy used to produce a ton of steel. Even so, its energy costs—mostly for coal—make up 17 percent of U.S. Steel's manufacturing costs. With natural gas decontrol, the company expects its energy costs to soon approach its labor costs, which now account for 20 percent to 23 percent of U.S. Steel's manufacturing budget.

U.S. Steel uses more than 100 billion cubic feet of gas a year, or over 1 percent of the 7.6 trillion cubic feet of gas sold annually in the U.S. for industrial use. In 1981, U.S. Steel paid about $3.25 a thousand cubic feet for its gas, up 20 percent from the year before.

As a result, the company has begun substituting coal for natural gas where possible, reversing a policy it instituted several years ago. Back then, with natural gas the cheapest fuel available, U.S. Steel began replacing coal with natural gas, eventually using it for 20 percent to 25 percent of its total energy consumption.

Natural gas decontrol will be an added handicap in the steel industry's struggle against foreign competition. "Most of our foreign competitors are ahead of us in experiencing higher costs and have already begun to invest large amounts of capital in energy conservation," says Walter Jackson, the director of energy at U.S. Steel. "As the price of energy goes up, it will put even a greater squeeze on industry in this country."

Even industries less dependent on energy take decontrol seriously. Natural gas is the main energy source for American Standard Inc., where energy accounts for about 2% of total manufacturing costs. Burton Van Dyke, the general manager of energy resources, concedes this bill is relatively small. "But," he adds, "in any industry with small margins (any increase) makes a difference." The maker of building and china products has an energy coordinator at each of its more than 40 plants. The coordinators compete for awards based on their plants' performances.

As unwelcome as higher gas prices are, many industrial users see long-run benefits from the lifting of price controls One such benefit may be additional supplies. Though currently there is a surplus of gas, many manufacturers worry about shortages, especially because homeowners and schools are top-priority customers.

Ray Gourley, a vice president of Dan River Inc., says: "We're in favor of deregulation because it puts more money out there to look for gas. We have to have that gas." Dan River uses four million cubic feet a day, paying $4 a thousand cubic feet.

Other textile manfucturers share his views. "Reliability of supply is a greater concern than cost," says Jack Elam, a vice president of Cone Mills Corp. "Not that we like paying higher prices. But we have trouble forgetting 1977, when we were threatened with shutdowns in South Carolina." If the company had not arranged for alternative supplies with another pipeline operator during that shortage, he says, some plants would have had to close.

Cone Mills uses gas in two manufacturing process. In one, denims and corduroys are singed with a flame to smooth the fabric and burn off extra-long cotton fibers. In the second, a flame is used to dry special resins and chemcials applied to the fabric. "Coal and oil leave residues on the fabric and change the color," Mr. Elam says in explaining why only natural gas can be used.

Many companies favor decontrol for another reason: It would abolish regional inequities in price that give competitors an advantage. Natural gas rates vary widely, depending on a plant's location and on how long ago a contract with a supplier was signed. Currently, prices range from as little as $2 to more than $5 a thousand cubic feet.

Industrial users would like Congress to accelerate decontrol beyond provisions of the Natural Gas Policy Act. Specifically, they want the "incremental pricing" clause of that law abolished. Under incremental pricing, industrial customers will be hit with the bulk of the gas price increases, in effect forcing them to subsidize homeowners. (Prior to the act, industrial customers paid, on the average, little more than half the price paid by homeowners.) Industrial users favor decontrol of all gas, with residential customers sharing equally in the cost.

Anxiety over gas prices is a novelty for most industrial users. "When I first came to the company, we didn't pay any attention to gas costs because we couldn't find them," says Cone Mills' Mr. Elam. But since 1972, the cost of the three billion cubic feet of gas Cone Mills uses annually has risen 419%. Where possible, the company has installed equipment capable of using two or three different types of fuel.

But conservation alone isn't enough to ease price worries. Owens Illinois has reduced its use of natural gas by 25% since 1972, while substantially increasing glass output. Still, its natural-gas bill has increased more than fivefold over that period.

Even decontrol's beneficiaries—the gas producers—may suffer if prices rise too high Last year Gerhard Stein, senior staff engineer at General Motors Corp., warned a meeting of the American Gas Association that higher natural-gas prices "could result in the loss of about one-third of the total current gas sales." He cautioned that customers who can use coal "can only be retained if gas remains competitive with coal over the long term."

When GM talks, the gas industry listens. GM uses 80 billion cubic feet of gas a year, more than 1% of the nation's industrial consumption. GM consumed that gas at more than 160 plants to produce 7.3 million vehicles—a considerable reduction from 1972, when GM consumed 88 billion cubic feet of gas at 130 plants to produce 6.2 million vehicles.

Mr. Stein told the gas association that new technology would lead to still greater reductions in GM's consumption. He noted, for example, that large volumes of air must now be circulated through areas of a plant where workers apply paint to vehicle. This safety measure—and the energy needed to provide it—will be unnecessary once GM developed robots take over the job of painting. Mr. Stein said these robots could save GM two billion cubic feet of natural gas each year.

Senator **Heinz**. Indeed, just one steel company, United States Steel, where its manufacturing costs, by the way, approach its labor costs, about 20, 25 percent, 23 percent of its manufacturing budget, would expect under current law, absent any changes in the decontrol schedule that is now in place, it would expect its current natural gas bill of $400 to $500 million dollars a year to double. That is under current law.

Last year a company was lucky if it earned about $400 or $500 million. This year it will be lucky if it doesn't lose about the same amount so, Mr. Chairman, I must say I am concerned about these kinds of policy implications.

My question to Rick is I have heard you say that the consumer interests will fit into your consideration, but when you talk about consumer interests, there are two ways of looking at it. One is obviously consumers want to have a supply, and one way of rationalizing—we have done it I think—we were justified in decontrolling new gas for this reason, which was that if consumers didn't have any gas, we weren't doing them a favor, so we agreed to decontrol the gas, but the cost to the consumer balanced against any additional gas, my first question, Rick, is to what extent when you say you are going to balance consumer needs, are you going to be concerned about increases in costs to consumers as opposed to what I would believe is the case of the rulemaking margin increases of supply?

Mr. RICHARD. Senator, I am very sympathetic to the questions that you raised last night in our conversation.

The notice of inquiry was asked for, and I unfortunately am in the position of coming in at the time it was already done by the Commission, by the Process Gas Users which, of course, represents a lot of industrial users. Also the National Association of Regulatory Utility Commissioners asked for it. LaClede Gas which is a distribution company in Missouri, among others, came in to ask the Commission to find out if there was a market ordering problem.

The market ordering problem can have a direct effect on consumer prices from residential users all the way to the industrials. This is some of the theory, and that is why these people came in to ask for an investigation. The people that came in, interestingly enough, are not from the producing side of the industry but from the consumer side. They were worried about certain contract clauses and and other items that might actually be raising the price of gas to the consumer above the retail level that the distribution companies were selling in their area, so they asked for a notice of inquiry for the Commission to look at that, and I think there is enough intellectual debate out in the marketplace to find out if there really are problems there.

I don't know, and I don't have an opinion one way or the other because all of the questions that they raised are not the questions that I had before, and they are very good questions, Senator. They are currently going on in the sharp subcommittee hearing on the House side, and there are a number of questions raised by the distribution companies, by the Citizens' Labor Energy Council and other people that I would like to look into as a Commissioner if I should be so confirmed.

I am very attuned to consumer impact, these interests, and I would like to take a look at them. I think the notice of inquiry is doing that. If the Commission didn't do that upon request by these groups, I think they would be abdicating their public interest role envisioned by their jurisdictional statutes that has been mandated by the Congress. At this time, I have no opinion whatsoever on increased prices in gas or anything else regarding a speedup in decontrol because the market has changed so much in the last 10 months that I don't know what is going on. You can look at every single segment of the industry, including all consumers. I think that everybody is just as concerned as you are about what is going on in the marketplace. Is the NGPA working to do what that was supposed to do? And I have no opinion on that, but I think the factfinding mission by FERC is an important one, end I would like to withhold any judgment until I——

Senator HEINZ. That may be. I was really asking you a broader, more philosophical question, which is when you talk about consumer interest, are you specifically talking about me being sensitive to the effect that the prince increases through accelerated administrative decontrol will have?

Mr. RICHARD. Yes, Senator, I am.

Mr. HEINZ. As opposed to some kind of rationalization that well, this will make the market a little more rational. How are you going to make those kind of judgments?

Mr. RICHARD. Well, in looking at the market ordering problem, it may be that—I may have mentioned this to you last night. It is the testimony over on the House side from Bethlehem Steel, for the PGC people that they had some statistics that tended to show that one half of the State of New Jersey or one third or portions of the State of New Jersey and Pennsylvania and States up along the seaboard could have a natural gas pipeline in 1985 that has a low cost of gas because of the cushion, whereas on the other side of the State you have an interstate pipeline going to the State that had a very low cushion and they were charging $3.50 per thousand cubic foot to come up there, and $4.50 per per thousand cubic foot on the other side of the State, and that could have a directly terrible proportional problem to the individual State, and that is part of the larger picture of the market ordering problem.

I am not saying, Senator, that I think that FERC can solve all those problems. I think that I would be very surprised if Congress in the future didn't spend more time with the NGPA because of these theoretical market ordering problems, brought about by a push from all interest groups. The market ordering problem can affect consumers on all sides.

If you have an industry in Pennsylvania that goes under because of discompetitive gas prices on an artificial basis, the load loss from those industrials will then affect the rates of those other residential users on that line, and that is an important issue to me that I think that everyone should be looking at.

I don't think, I am not saying that increasing prices will take care of those problems. I don't know that. I haven't seen the record, and I can't tell you that, but I am very sensitive to that and the bigger picture of that market ordering problem that will affect every region in the country, Senator.

Mr. HEINZ. Do you believe that all natural gas really ought to be decontrolled?

Mr. RICHARD. Senator, if NGPA would work its course, all gas would be deregulated eventually.

Senator HEINZ. Let me rephrase the question. I don't want you to spend a lot of time answering a question I didn't phrase exactly as I should.

Do you basically believe that our policy should be, irrespective of NGPA, the immediate decontrol of natural gas?

Mr. RICHARD. I don't have a position on immediate decontrol at all, Senator. That concerns questions raised in the Notice of Inquiry. There are questions that I will look at. What I might have said 10 months ago about the retail prices of natural gas in Pittsburgh versus what they would have been, may be different now. The market is in complete disruption right now. Some of those high-cost contracts, getting $10, are now going down to nearly $5. This shows pipelines were not complete madmen by bidding up the price $10 per thousand cubic feet, so I think my position right now is, and I would be less than intellectually honest if I said otherwise, is I don't know. I don't know if there should be a speeding up of decontrol, and I honestly can tell you that I do not have a position on this. There are a lot of questions to be answered.

Senator HEINZ. Ten months ago before the turmoil in the market you would have basically been in favor?

Mr. RICHARD. On theory, it looked like the way to do away with the cushion problem that caused disruptions around the rest of the country, to raise the price of gas would have theoretically taken care of the perceived problem. There could be, and there may not be, but——

Senator HEINZ. How does that square with your concerns about consumers as you expressed them a moment ago?

Mr. RICHARD. Senator, that is the thrust of my point.

Senator HEINZ. If you had been able to waive a magic wand 10 months ago and have decontrol——

Mr. RICHARD. I don't mean to imply that immediate decontrol is the answer to anything. I don't mean I believed that 10 months ago. I think the possibilities of immediate decontrol are not politically feasible. I don't think anybody has been debating whether or not we ought to have immediate decontrol at all, and I don't think that is a smart move either.

I didn't mean to imply I thought immediate decontrol would answer everyone's problems. I would like to emphasize that. I didn't mean that.

Senator HEINZ. I am a little confused by what you said. Maybe I misheard you, but I thought you said 10 months ago you would have favored immediate decontrol.

Mr. RICHARD. No. That is why I am clarifying it. I didn't mean to say immediate decontrol, Senator. I'm sorry that you misunderstood.

Senator HEINZ. But you do favor decontrol as soon as practicable?

Mr. RICHARD. I favor decontrol whenever it is the best for the country, Senator. I don't have a position of moving on any kind of phasing up of prices at all right now, and that is the intent of the notice of inquiry is to look into that to see whether or not there, one, is a problem. There might not be a problem, and NGPA might be best left to work itself out, but when substantial consumer groups—and these are industrial users, these aren't people that are producers—when they say there are market problems, and they want the FERC to look at it, I think it is an abdication of the public interest not to do that, and I think it will answer a lot of questions raised in the Sharp hearings on the House side. They have raised a lot of questions to me. I have read their testimony about the end use of natural gas. We may have to change the whole way we look at producing natural gas.

The producers may not be accustomed to a free market and they may need to have other ways to look at the free market. The controls on natural gas have been in existence since 1938, 1954, and unlike oil, there is a lot of institutional problems that need to be looked at in order to move to a free market, and I can't imagine an immediate decontrol taking all that into account.

Senator HEINZ. Mr. Chairman, I may return after some other people have had some questions. I will certainly submit some questions.

The CHAIRMAN. Very well.

Mr. RICHARD. Thank you, Senator.

The CHAIRMAN. Senator Bradley?

Senator BRADLEY. Thank you very much, Mr. Chairman. A lot of the concerns that Senator Heinz has taken some time expressing are held by many in the Northeast who represent consuming States. We have had conversations about the subject that Senator Heinz dealt with, and you have basically said that as far as you see it, there are problems with decontrol of natural gas, institutional problems that you have pointed out. But I think it is important that you keep in mind that there are two ways that you decontrol natural gas.

One way is if we in Congress modify the Natural Gas Policy Act, we decontrol legislatively. And the other is if you do it administratively as a Commissioner of FERC. I think frankly that back-door approach without any real public accountability other than the fact that we bring you up here to ask you questions is why this nomination is so important and why Senator Heinz and I and most Senators from consuming States are very concerned that we understand specifically what your views are, and second, that you understand how strongly we feel against administrative decontrol.

Now if you have evidence that you can bring to show consuming States benefits, we will look at that evidence. But the burden of proof is going to be on you. I have and I think Senator Heinz has taken very strong positions that we don't want a back-door approach to this problem which is what will happen if natural gas is decontrolled at FERC. But I think central to this deliberation is what is the process by which you are going to make the decision?

Mr. RICHARD. Senator, the notice of inquiry provides for public comments and should be completed later this month. What that will do is present a record, identifying if there is a problem. See, there has been no record before the Commission that there is a problem at all. There was just theoretical questions that were asked.

One, I would have to look at all that evidence. Then two, we would have to see if, if at all the Commission had any way to do anything, if anything should be done. As a practical matter, a notice of inquiry is nothing more than a factfinding mission. After the notice of inquiry there could be a notice of proposed rulemaking which would bring in all parties on the record, to come in and make a case, but as a practical matter, Senator, I believe that there are going to be problems that FERC cannot take care of, and the Congress will have to get involved if that is what it takes to take care of any problem that may exist.

There are contract problems that the FERC may not be able to deal with so as a practical matter, I think the Congress will be looking at natural gas again unless it shows that the market is working well and NGPA——

Senator **Bradley**. You are saying in effect that you do not believe that you could as a Commissioner at FERC decontrol natural gas?

Mr. **Richard**. I can't say that without looking at the record, Senator, because I would be prejudging the issue, and that is not my role here. I want to assure you that any decision that I would make would be on the record with all the good sense that I have had before when I have worked in the Congress. I am very aware of the congressional interest in this matter, and when you really think about it, I think that the best that the Commission may be able to do is show what is going on in the gas market. I think the Congress may be able to move from there if there is any problems that are identified.

Senator **Bradley**. So that the process that you have described is one of notice of inquiry which is essentially the presentation of the facts and evidence?

Mr. **Richard**. Yes, Senator.

Senator **Bradley**. Then an assessment by the Commission as to what they can or cannot do under their jurisdiction?

Mr. **Richard**. That would take the form of a proposed rulemaking if the decision was made to even move with the proposed rulemaking.

Senator **Bradley**. And then after a proposed rulemaking, there would be a period for public comment?

Mr. **Richard**. Oh, yes, sir—no question about it.

Senator **Bradley**. To what extent do you bring Senators and Congressmen from the consuming States into your own deliberations?

Mr. **Richard**. Well, many times Senators and Representatives, Senator Bradley, come before the Commission and submit comments, and I am sure that there will be opportunity to do that.

Senator **Bradley**. To what extent do you bring Governors of the States into your own process?

Mr. **Richard**. Same way. Now I would suggest that the Commission could possibly do a much better job of bringing in State utility commissioners and talking to them because they have to regulate the retail rates, and they are the ones that are closest to the action, and I think that there should be more involvement from the end use rather than just the producing oil and transportation end.

Senator **Bradley**. As you look at this process, and as Commissioner you will eventually have to reach some kind of conclusion, what criteria do you establish for your own guidelines? What are you looking for in order to make the decision? And try to be as general as possible, not as specific as possible.

Mr. **Richard**. That's a new one.

Senator **Bradley**. You answered Senator Heinz question as specifically as possible.

Mr. **Richard**. I think that the concerns of the Nation at large would be my major—that is as specific as I can get.

Senator **Bradley**. No. That is as general as you can get.

Mr. **Richard**. Excuse me. That is as general as I can get, but no one is not affected by what happens with natural gas. I understand that, and I would look at numerous factors.

Senator **Bradley**. Let's take the example that Senator Heinz gave you—the steel industry in trouble, prospect of administrative decontrol and increasing costs of the steel industry, and then as you pointed out, if you have an industry that has a problem and you lose the industry, that just doesn't affect that industry and the jobs in that industry but affects all the residential consumers on that line.

Mr. **Richard**. Yes, Senator.

Senator **Bradley**. Now what is the proportion that you are going to weigh, this ultimate consumer interest which is the residential user of natural gas when you are determining whether company X or company Y would like to have A, B, and C at the Commission? How do you weigh that benefit to the corporation versus the ultimate impact of it on the consumer?

Mr. **Richard**. Well, Senator, that is kind of a hard question to answer. I am thinking of a situation where you have a region of the country——

Senator **Bradley**. They are both in the same region.

Mr. **Richard**. There may have to be some kind of an adjustment made. I don't know if the FERC could do that specific type of decision or if that is a decision you would have to make. That's a tough one.

Senator **Bradley**. An adjustment is made—you mean for the consumer that ended up with the higher price?

Mr. **Richard**. That's right.

Senator **Bradley**. So that you are saying that you would favor such an adjustment for the consumer?

Mr. **Richard**. If it could be done, Senator. I don't know if it can be done. There are two sides to the jurisdiction of the Commission, and I understand the concerns of the worry about an administrative decontrol, but there is another side, too, about the consumer interest, whether or not you can balance them both off. It could happen either way, but I am not trying to fudge. I am just not real sure.

Senator **Bradley**. The key point is that you recognize that if an administrative decision is taken, that affects corporation X or Y, that there is an effect also on the consumer, and if that effect is negative, it will raise the cost significantly.

Do you think an adjustment is appropriate—personally you think that? Now I don't know if you can do that at FERC. I understand that, but personally you think that there should be an adjustment made for the consumer? Is that correct?

Mr. **Richard**. I think, Senator——

Senator **Bradley**. Thank you very much.

The **Chairman**. Thank you, Senator.

Senator **Melcher**. Thank you, Mr. Chairman. Rick, as you know, there was no need of a meeting between you and me. I hope you understood that for this appointment I do have confidence in your capability and your judgment.

What I want to ask you right now is that as soon as you get confirmed, to supply me with some information that I think you could pick up out of the FERC. I would like to describe the problem so that you know what I am asking for. It has nothing to do with decontrol of natural gas prices. I want to turn to the Fuel Use Act.

I want to describe what our situation is in Montana, and it may be true in other States.

Our principal utilities supply most of home consumers with natural gas in Montana, and that it is the predominant source of home heat in Montana. The principal utility doing this is Montana Power Co., and they have some contracts with Canadian gas. The gas costs $4.95 or thereabouts at the border.

We are a gas producer State and part of the industry simply is not out drilling wells for natural gas, the shallow gas in the shallow gasfields. The reason the rigs are just sitting there, with the gas is available, and the leases are in effect and what have you. The market for that shallow gas since it is in small quantities is rather limited, and it is fair to say that a new gas well in a shallow gas field would probably be lucky to get a contract or get a contract around $2.50 or $2.70 per 1,000 cubic feet, so I can understand the dilemma.

Forty percent approximately of the natural gas that Montana Power distributes and sells to home consumers is the Canadian gas at $4.95, while the market for shallow gas that could be produced in sufficient quantity to be supplied to Montana Power to offset the expense of Canadian gas won't return the producers enough to make continued drilling profitable.

I would like to know whether modifications of the Fuel Use Act on a regional basis would be a method for solving this dilemma? I suspect that perhaps there is an opportunity for modification to that act if there be a greater demand for natural gas which would stir greater development, and that that would result perhaps in the price of around $3 per 1,000 which would be advantageous to our consumers, particularly home consumers.

Would this be, in your judgment, at least in the national interest?

Mr. RICHARD. Yes, Senator. I will be happy to look into it.

Senator MELCHER. Thank you.

The CHAIRMAN. Thank you. Are there any further questions of this witnesss.

Senator DOMENICI. Mr. Chairman, I don't have a question, but were you going to complete the hearing now on this?

The CHAIRMAN. I had hoped we could, yes.

Senator DOMENICI. I just wanted to make an observation. I have high regard for my distinguished friend from Pennsylvania. His concern with reference to the marketing order as discussed here, I think I could address it in his presence that if you look at States like Texas, Louisiana, Oklahoma, California, New Mexico—that just comes to mind—that while they may be perceived to be producing States and not consuming States, they are both, but as a matter of fact because the intrastate gas was deregulated from the beginning, they have a more severe consumer problem than the pure consumer State in the very same way that you have described it because they started from a higher base, and consequently, the distortions that have been discussed are more applicable to them, so I didn't want the record to indicate that we don't have the same kind of problem or worse in those consuming States that were deregulated before because it was purely intra, and have the consumer also within their borders, so we are as concerned about the questions you asked, and your answers which indicated very complicated relationships that are not so easy to solve.

I think we have all the consumer and producer problems and availability problems and perhaps in a number of those they are worse than pure consumer States, so I want to make sure the record clearly indicates in that regard as to those set of facts that the consumer issue and the availability issue in our producing States is very serious also.

Senator HEINZ. Mr. Chairman, I want to say I am well aware of that, and the Senator is correct in every respect save one, which is that Pennsylvania is a producing State.

Senator DOMENICI. Yes; New Mexico, Pennsylvania, and Louisiana.

Senator HEINZ. Our only problem is we don't produce enough.

Senator DOMENICI. You never can produce enough natural gas. Louisiana doesn't produce enough, is that right?

Senator JOHNSTON. That's right.

Senator DOMENICI. We are just beginning. We don't produce enough.

Thank you very much. Thank you, Senator.

The CHAIRMAN. Thank you, gentlemen. Before leaving the table, Mr. Richard, would you like to introduce your family and friends?

Mr. RICHARD. Senator, I would love to. My wife, Donna is on the end; next my father, Oliver G. Richard, Jr.; my mother, Jean Richard, Jimmy Hayes, my senior partner, and his wife Leslie, and finally the Duplantiers, David and Melanie.

The CHAIRMAN. Thank you very much. It's nice to have all of you folks here. Mr. Richard appreciates it as we do.

Senator DOMENICI. Are you going to let them vote?

The CHAIRMAN. They can't vote.

Mr. RICHARD. Don't let them vote.

The CHAIRMAN. Not here, not today; thank you very, very much, and again, you folks are very, very welcome in the committee room today.

Mr. RICHARD. Thank you, Mr. Chairman.

The CHAIRMAN. We have another witness, Mr. Edward F. Burke, chairman of the State of Rhode Island Public Utility Commission. Mr. Burke?

The CHAIRMAN. While Mr. Burke is taking his place at the table, I might just mention that Senator Humphrey who was here earlier but had to leave has a statement in support of the nomination of Mr. Richard and will be made a part of the record at the beginning of the hearing.

Senator Baucus wants the statement by Gorden E. Bollinger, chairman of the Public Service Commission of the State of Montana in support, or at least in support of Mr. Richard's nomination, to be made a part of the record, and that will also be made part of the record at this point.

[The letter referred to follows:]

PUBLIC SERVICE COMMISSION,
Helena, Mont., August 5, 1982.

Hon. MAX BAUCUS,
U.S. Senator,
Washington, D.C.

DEAR SENATOR BAUCUS: This is a follow-up on my July 13 letter, in which I opposed the nomination of Oliver G. Richard, III, of Louisiana to the Federal Energy Regulatory Commission.

While the conditions remain that the FERC Board will not be made up of members representing the various parts of the United States, after talking with Mr. Richard, I am certain that he is very well qualified and will do his best to represent the interests of the entire United States, as well as the various regions. I am also certain that he will not be parochial in his outlook as the FERC regulations affect our part of the country.

In visiting with our congressional people, I am assured that Mr. Richard is a very knowledgeable individual and would be a good asset to the Federal Energy Regulatory Commission. It is very important to have someone with a knowledge of the industry, as well as the interest of the entire nation at heart when decisions are made on the Commission.

I, therefore, withdraw my opposition to Mr. Richard and concur that he would be an excellent member of FERC.

Sincerely,

GORDON E. BOLLINGER, *Chairman.*

The CHAIRMAN. Mr. Burke.

STATEMENT OF EDWARD F. BURKE, CHAIRMAN, RHODE ISLAND PUBLIC UTILITIES COMMISSION

Mr. BURKE. Good morning, Senator. My name is Edward F. Burke, chairman of the Rhode Island Public Utilities Commission, and president of the National Association of Regulatory Utilities Commission.

I appear today in my capacity as chairman of the Rhode Island Public Utilities Commission. I am here to oppose the confirmation of Oliver G. Richard III, of Louisiana to the Federal Energy Regulatory Commission.

I am also transmitting a resolution in opposition to Mr. Richard's nomination which was adopted earlier this week by the New England Conference of Public Utility Commissioners, 18 commissioners in the 6 States.

I must apologize. There is a copy attached to my remarks that I explained to Mr. Doane this morning that I left the original on my desk in Providence, and it will be forwarded.

The CHAIRMAN. It will be made a part of the record.

Mr. BURKE. I am further authorized by Gov. J. Joseph Garrahy of Rhode Island, chairman of the Coalition of Northeast Governors, CONEG, to inform you that at a meeting of the CONEG held this week in Afton, Okla., CONEG adopted a resolution in opposition to the pending nomination. Because of time constraints and the location of the meeting which was at the National Governors Association conclave, the actual resolution will be transmitted to you within a few days.

The CHAIRMAN. That, too, will be made a part of the record.

Mr. BURKE. Similarly, Gov. Joseph Brennan of Maine, the chairman of the New England Governors Conference, asked me at Afton to inform you that he has written to the President to register his opposition to the nomination. He was not aware of the pendency of these hearings and will confirm his views to this committee in writing as quickly as possible.

The opposition which I am registering today is in no way a reflection on Mr. Richard personally. In fact, it is a very difficult thing that I am doing today. I have not met Mr. Richard. I have seen his lovely family that is here. I have my daughter with me today. My wife would like to be with me also simply because I am not a head hunter. I am not one who—I could see myself sitting in just the same position and having been from Louisiana or Texas or some other part of the country, someone raising questions about me, and it is definitely not personal. In fact, it is with great reluctance that I testify negatively relative to the candidacy of this person that I do not know.

In a letter to the President on July the 20th in which I expressed concern about the Richard nomination, I said, and I quote.

> These concerns do not relate to the character or qualification of Mr. Richard who from all reports appears to be personable, conscientious and well trained. Were it not for the serious imbalance in the membership of the FERC which a Richard appointment would entail, I would not oppose the nomination. That, however, is the issue.

When I first learned through press reports in early May that the President was contemplating the possibility of nominating Mr. Richard, I decided to look into the matter in some detail. I was especially interested in the comments of such respected groups at the Northeast-Midwest Congressional Coalition, Energy Action, and the American Public Power Association, that a Richard appointment would create a serious geographic imbalance in the membership of FERC. In fact, such a nomination if confirmed would leave the Northeast, Mid-Atlantic, Midwest, Rocky Mountain, and Pacific Northwest Regions of the country, the net energy consuming States, the so-called Frost Belt, totally unrepresented on the Commission.

I thought that such a situation would be particularly unfortunate at a time when persons from all regions and both political parties must participate to develop a cohesive national energy policy, and I know, Senator McClure, that you are aware of my views because I have discussed them in conclaves where you were present. It would come at a time when the FERC is considering important issues relative to natural gas pricing and electricity generation that are a matter of vital concern to all Americans, and I want to go from my text for 1 minute and put my RIPUC hat on.

I think there is one issue that should be clarified even for the benefit of Mr. Richard. I heard reference to the notice of inquiry that the FERC posted on the 28th of April, and they requested that notice of inquiry.

I should correct the record by saying that we did after certain other events had taken place suggest that there be a notice of inquiry because we were concerned, and tremendously concerned, about the statement of Chairman Butler of the FERC that he was going to stretch the regulatory powers of the FERC or test their outer limits relative to possible administrative decontrol of natural gas to accelerate the phrased deregulation, and we felt very strongly that before any such action should be taken, there should be an inquiry process.

That was the reason that we went at it. We suggested that there should be a Federal/State joint board much as we have in the Federal Communications Commission on the separations form, and I serve on that board at this point, and finally, it was and is our position that the matter of natural gas pricing, the matter of natural gas policy ultimately, belongs with the Congress of the United States and we can only move with a congressional consensus, and I just wanted to get that point, and excuse me for the deviation, but I thought I should mention that.

I reviewed the composition of the Federal Power Commission and the successor FERC over the last two decades and found that by and large, the major geographical regions of the country were usually represented in the roster of the Commission. I then contacted my two U.S. Senators, Claiborne Pell and John Chafee, to express my concern. Subsequently I submitted to them a list of present or former State public utilities regulators from Maine to Nevada who typified the type of expertise available for appointment from the Northeast-Midwest-Pacific regions of our country. The list contained only Democrats Independents as this vacancy, as you know, must under the law be filled by a member of the minority.

They and I made it clear that we did not desire to embarass Mr. Reagan or the administration. We did not make the names public. We gave them to Senators Chafee and Pell as a resource. These ladies and gentlemen have one common denominator. They have various philosophies about regulation, but they were eminently qualified and willing to serve. The names were subsequently submitted as a resource list to the President by Senators Pell, Chafee, Kennedy, Tsongas, Heinz and Bradley on June 23. I have attached their letter to my testimony as it most eloquently reflects my sentiments. They said in part, and I quote.

> In veiw of the significant natural gas deliberations currently underway and those to be considered in the next few years, we would be most concerned if the current vacancy was not filled with a nominee who could represent those states and consumers in the Midwest and Northeast who are relying increasingly on natural gas as the principal energy source.

Unfortunately, the President never to my knowledge responded substantively to the central theme of the Senators' letter or to others of like vein, including several from Governors. I know that Governor Garrahy of Rhode Island wrote. He received a perfunctory reply from a correspondence secretary that his letter of concern would be turned over to the White House personnel. That is the only response that he received.

Most assuredly Mr. Richard did confer with individual Senators and staff aides and wrote of his concern for consumers, regardless of region, to several Senators, and I have heard his testimony on that fact this morning, and I know he has talked in recent days with many of you on the committee.

Mr. Reagan, however, has remained silent on the central issue. He has not explained to you or to the American people why he decided that he could not find a qualified nominee in the northern half of this Nation.

The issue is not Mr. Richard. I realize that he is known by most of you and has worked closely with many of you. I have talked and am a personal friend of friends of Mr. Richard, and I know how highly they feel about him personally. As I said in my letter to President Reagan, quote:

> No responsible person objects to the selection as a commissioner to the FERC of a person from Texas or Louisiana or any particular region. However, there should be some semblance of regional balance. Most assuredly if you—

And that is to say Mr. Reagan—

> . . . if you had appointed a majority of Commissioners from New England or the Middle West and had totally excluded representation from the South and Southwest, there would have been similar appropriate concerns voiced by responsible persons in those regions. To be sure, Mr. Richard might well serve with distinction. To be sure, the views or performance of a commissioner from the North or West might not markedly differ from that of Mr. Richard. The selection of such a person would, however, restore confidence in the process. It would give us confidence that due regard has been given to all sections and all interests.

That is the end of the quote.

Mr. Reagan in my opinion has no desire or intention to explain why he has chosen to leave those areas of the Nation which still contain a substantial majority of our citizens totally unrepresented on the FERC.

I think, however, that it is the responsibility of you Senators as our elected representatives to demand a public answer from the President of the United States. At present, the silence of Mr. Reagan could be construed as meaning the Frost Belt no longer counts, and it isn't even entitled to an explanation of why it no longer counts.

Thank you very much.

[Prepared statement and attachments submitted by Mr. Burke follows:]

Statement

by

Edward F. Burke, Chairman
Rhode Island Public Utilities Commission

before the

Senate Committee on Energy and Natural Resources

on the

Nomination of Oliver G. Richard III
to the
Federal Energy Regulatory Commission

on

August 12, 1982

Washington, D. C.

My name is Edward F. Burke, Chairman of the Rhode Island Public Utilities Commission and President of the National Association of Regulatory Utility Commissioners. I appear today in my capacity as Chairman of the Rhode Island Public Utilities Commission. I am here to oppose the confirmation of Oliver G. Richard III of Louisiana to the Federal Energy Regulatory Commission.

I am also transmitting a resolution in opposition to Mr. Richard's nomination which was adopted earlier this week by the New England Conference of Public Utilities Commissioners. I am further authorized by Governor J. Joseph Garrahy of Rhode Island, Chairman of the Coalition of Northeast Governors (CONEG), to inform you that a meeting of CONEG held this week at Afton, Oklahoma, CONEG adopted a resolution in opposition to the pending nomination. Because of time constraints and the location of the meeting the actual resolution will be transmitted to you within a few days. Similarly, Governor Joseph Brennan of Maine, the Chairman of the New England Governors' Conference, asked me at Afton to inform you that he has written to the President to register his opposition to the nomination. He was not aware of the pendency of the hearings and will confirm his views to this Committee in writing as quickly as possible.

The opposition which I am registering today is in no way a reflection on Mr. Richard personally. In fact, it is with great reluctance that I testify negatively relative to the candidacy of a person whom I do not know. In a letter to the President on July 20 in which I expressed concern about the Richard nomination, I said:

These concerns do not relate to the character or qualification of Mr. Richard who, from all reports, appears to be personable, conscientious and well trained. Were it not for the serious imbalance in the membership of the FERC which a Richard appointment would entail, I would not oppose the nomination. That, however, is the issue.

When I first learned through press reports in early May that the President was contemplating the possibility of nominating Mr. Richard, I decided to look into the matter in some detail. I was especially interested in the comments of such respected groups as the Northeast-Midwest Congressional Coalition, Energy Action and the American Public Power Commission that a Richard appointment would create a serious geographic imbalance in the membership of the FERC. In fact such a nomination, if confirmed, would leave the Northeast, Mid-Atlantic, Midwest, Rocky Mountain and Pacific-Northwest regions of the country, the net energy consuming states--the so-called "Frostbelt"--totally unrepresented on the Commission.

I thought that such a situation would be particularly unfortunate at a time when persons from all regions and both political parties must participate to develop a cohesive National energy policy. It would come at a time when the FERC is considering important issues relative to natural gas pricing and electricity generation that are a matter of vital concern to all Americans.

I reviewed the composition of the Federal Power Commission and the successor FERC over the last two decades and found that by and large the major geographical regions of the country were usually represented in the roster of commissioners.

I then contacted my two United States Senators Claiborne Pell and John Chafee to express my concern. Subsequently, I submitted to them a list of present or former state public utilities regulators from Maine to Nevada who typified the type of expertise available for appointment from the North-Midwest-Pacific regions.

The list contained only Democrats or Independents as this vacancy must, under the law, be filled by a member of the minority. They and I made it clear that we did not desire to embarrass Mr. Reagan or the Administration. We did not make the names public. These names were subsequently submitted as a resource list to the President by Senators Pell, Chafee, Kennedy, Tsongas, Heinz and Brady on June 23. I have attached their letter to my testimony as it most eloquently reflects my sentiments. They said in part:

> In view of the significant natural gas deliberations currently underway and those to be considered in the next few years, we would be most concerned if the current vacancy was not filled with a nominee who could represent those states and consumers in the Mid-west and Northeast who are relying increasingly on natural gas as the principal energy source.

Unfortunately, the President never, to my knowledge, responded substantively to the central theme of the Senators' letter or to others of like vien, including several from Governors. Most assuredly, Mr. Richard did confer with individual Senators and staff aides and wrote of his concerns for consumers regardless of region to several Senators.

Mr. Reagan, however, has remained silent on the central issue. He has not explained to you or to the American people why he decided that he could not find a qualified nominee in the northern half of this nation.

The issue is not Mr. Richard. I realize that he is known by most of you and has worked closely with many of you. As I said in my letter to Mr. Reagan:

No responsible person objects to the selection as a commissioner of the FERC of a person from Texas or Louisiana or any particular region. However, there should be some semblance of regional balance. Most assuredly if you had appointed a majority of Commissioners from New England or the Middle West and had totally excluded representation from the South and Southwest, there would have been similar appropriate concerns voiced by responsible persons in those regions.

To be sure, Mr. Richard might well serve with distinction. To be sure, the views or performance of a commissioner from the North or West might not markedly differ from that of Mr. Richard. The selection of such a person would, however, restore confidence in the process. It would give us confidence that due regard has been given to all sections and all interests.

Mr. Reagan, in my opinion, has no desire or intention to explain why he has chosen to leave those areas of the nation which still contain a substantial majority of our citizens totally unrepresented on the FERC. I think, however, that it is the responsibility of you as our elected representatives to demand a public answer from the President.

At present the silence of Mr. Reagan could be construed as meaning the "Frostbelt" no longer counts and it isn't even entitled to an explanation of why it no longer counts.

NEW ENGLAND CONFERENCE OF PUBLIC UTILITIES COMMISSIONERS, INC.
38 CHAUNCY STREET, SUITE 1204, BOSTON, MASSACHUSETTS 02111 617 / 542-5504

DON R. FINK, EXECUTIVE DIRECTOR AND SECRETARY
SALLY F. HELMS, ADMINISTRATIVE ASSISTANT

RALPH H. GELDER, PRESIDENT AND TREASURER
CHAIRMAN, MAINE PUBLIC UTILITIES COMMISSION
THOMAS K. FITZPATRICK, VICE-PRESIDENT
CHAIRPERSON, CONNECTICUT PUBLIC UTILITIES CONTROL AUTHORITY

RESOLUTION RE NOMINATION OF OLIVER G. RICHARD III TO FEDERAL ENERGY REGULATORY COMMISSION

RESOLVED, that the New England Conference of Public Utilities Commissioners, Inc. registers its opposition of the nomination of Oliver G. Richard III to the Federal Energy Regulatory Commission, as his appointment when coupled with the present membership of the Commission would virtually exclude all net energy consuming states from representation on the Commission.

State of Rhode Island and Providence Plantations
EXECUTIVE CHAMBER, PROVIDENCE

J. Joseph Garrahy
Governor

June 8, 1982

The President
White House
Washington, D.C.

Dear Mr. President:

Recent press reports have indicated that you will nominate Oliver G. Richard to fill the vacant position on the Federal Energy Regulatory Commission (FERC). I am concerned because none of the currently sitting commissioners represents an energy-poor state from the Northeast or Midwest.

Currently, three of the four commissioners are from states which are net energy producers, Texas and California. Naming Mr. Richard to the seat would add a member from a producing state in the South to this already geographically unbalanced picture. As you know, Chairman Butler and Commissioner David Hughes are from Texas, Anthony Souza is from California and Georgiana Sheldon is from Virginia.

I would like to go on record with the Rhode Island Energy Coordinating Council, which passed a unanimous resolution at its June 3rd meeting urging you to appoint a commissioner from a net-consuming state, such as in the Northeast, in order to bring a broader perspective and better geographical balance to the FERC.

A list of the names of some individuals eminently qualified for the seat has been assembled and has been sent to Rhode Island Senators Chafee and Pell. The list is available to you as a resource, and while we do not offer this as a complete list of all the qualified candidates, all have indicated that they would be willing to serve if asked.

Sincerely,

J. Joseph Garrahy
GOVERNOR

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CLAIBORNE PELL
RHODE ISLAND

United States Senate
WASHINGTON, D.C. 20510

June 22, 1982

The Honorable Ronald Reagan
The President
The White House
Washington, DC 20510

Dear Mr. President:

We are writing in response to recent published reports indicating that you may soon nominate Mr. Oliver G. Richard to fill the current vacancy on the Federal Energy Regulatory Commission (FERC). We urge that you give every consideration to the nomination of a Commissioner from a natural gas consuming state, particularly one from a state in the Northeast or Midwest.

At present, two of the four Commissioners at the Federal Energy Regulatory Commission are from Texas, a major natural gas producing state; a third from Hawaii, a state not part of the natural gas distribution system and the fourth from Virginia, a state which ranks in the lower half of natural gas consumption.

In our opinion, natural gas consuming states are not adequately represented on the Federal Energy Regulatory Commission. The nomination of Mr. Richard, although an individual with extensive qualifications and considerable experience on natural gas matters, would add another Commissioner from a major natural gas producing state resulting in a significant geographical imbalance on the Commission.

In view of the significant natural gas deliberations currently underway and those to be considered in the next few years, we would be most concerned if the current vacancy was not filled with a nominee who could represent those states and consumers in the Midwest and Northeast who are relying increasingl on natural gas as the principal energy source.

We are pleased in this regard to submit for your consideration a list of several eminently qualified individuals to fill the current Federal Energy Regulatory Commission vacancy. All individuals have indicated their willingness to serve as a Commissioner if nominated. The list is available to you as a resource. We are not offering these names as a complete list of all qualified candidates you may wish to consider.

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Page 2
June 23, 1982
Mr. President

We appreciate very much your consideration of our concerns regarding this nomination.

Ever sincerely,

Claib Pell
Claiborne Pell

John Chafee

Ed Kennedy
Edward M. Kennedy

Paul Tsongas
Paul Tsongas

John Heinz
John Heinz

Nicholas F. Brady
Nicholas F. Brady

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Federal Energy Regulatory Commission Nominees

Charles J. Fraas, Jr.	Chairman, Missouri Public Service Commission
Ralph H. Gelder	Chairman, Maine Public Utilities Commission
Heber P. Hardy	Chairman, Nevada Public Service Commission
Edward H. Hynes	Commissioner, New Jersey Board of Public Utilities
E. Dandridge McDonald	Chairman, West Virginia Public Service Commission
Anne F. Mead	Commissioner, New York Public Service Commission

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PUBLIC UTILITIES COMMISSION
100 Orange Street
Providence, R. I. 02903

July 20, 1982

The President
The White House
Washington, DC 20510

Dear Mr. President:

I write in relation to your nomination of Oliver G. Richard III, of Louisiana to the Federal Energy Regulatory Commission.

I wish to add my voice to those of the many responsible individuals and organizations, including members of Congress from both political parties, who have written to you or spoken out publicly relative to their concerns about the Richard nomination.

These concerns do not relate to the character or qualifications of Mr. Richard who, from all reports, appears to be personable, conscientious and well trained. Were it not for the serious imbalance in the membership of the FERC which a Richard appointment would entail, I would not oppose the nomination. That, however, is the issue. At present of the four sitting members of the FERC, two are from Texas, a major energy-producing state, one is from Hawaii, a state, not part of the natural gas distribution system, and the last is from Virginia.

When the possibility was first raised in early May that you were considering appointing the gentleman from Louisiana to the vacancy, many responsible persons and organizations were prompted to comment. These comments, which came from such diverse groups as the Northeast-Midwest Congressional Coalition, the American Public Power Association, Energy Action, several governors and many state regulators had one central theme: The Richard appointment would leave the Northeast, Mid Atlantic, Midwest, Rocky Mountain and Pacific-Northwest regions of the country, the net energy consuming states, totally unrepresented on the Commission. This at a time when the FERC is considering important issues relative to natural gas pricing and electricity generation that are a matter of vital concern to all Americans.

In keeping with this theme I prepared a list of eminently qualified present or former State regulators from Maine to Nevada,

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who would be willing to serve if selected. This list was forwarded to you by Senators Pell and Chafee and some of their colleagues not as an all-inclusive list, but as an example of the many qualified persons – as qualified as Mr. Richard – from the Northern, Central and Western sections of America. As you know the law requires that this particular position be filled by a qualified Democrat or Independent.

The several letters to you were written not in a spirit of acrimony or confrontation. They were written with a hope that you would reflect and determine to make an appointment consistent with the national responsibilities of the FERC.

No responsible person objects to the selection as a commissioner of the FERC of a person from Texas or Louisiana or any particular region. However, there should be some semblance of regional balance. Most assuredly if you had appointed a majority of Commissioners from New England or the Middle West and had totally excluded representation from the South and Southwest, there would have been similar appropriate concerns voiced by responsible persons in those regions.

Unfortunately, you have failed to take into account our concerns. In fact, your responses to letters on this subject from citizens and government officials have been perfunctory at best.

To be sure, Mr. Richard might well serve with distinction. To be sure, the views or performance of a commissioner from the North or West might not markedly differ from that of Mr. Richard. The selection of such a person would, however, restore confidence in the process. It would give us confidence that due regard has been given to all sections and all interests.

I urge you to explain publicly your reasons for appointing Mr. Richard, and I would hope that ultimately you would withdraw his name from consideration at this time.

Sincerely,

Edward F. Burke

Edward F. Burke
Chairman
Rhode Island Public Utilities Commission

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The **Chairman**. Thank you, Mr. Burke.

Senator **Johnston**. Mr. Burke, I have read your statement very carefully, and I note that you have been very careful to point out that Mr. Richard is of good quality. I am sure you have been impressed inasmuch as you have been here today. I know your position is not personal, as you point out in your statement.

Mr. Richard might well serve with distinction, and I think you will find that he will. Rick Richard does not represent Louisiana. He certainly does not represent Louisiana producers. During the formative years of the NGPA, from 1977 through March 1981, no producing State commissioner was on the Commission. July 1, 1977, for example, we had New York, Arkansas, Mississippi, Pennsylvania, Massachusetts, and so it was on through October 1, through March 1, 1981, and we didn't as a matter of fact raise complaint at that time. At least I didn't, and I don't know of anybody who did.

I think you have to go above and beyond the place of a man's birth or where he happens to grow up in measuring his fitness to serve on this Commission or other Federal jobs. I really don't think there ought to necessarily be a quota. I think we ought to measure Rick Richard by his ability and by his philosophy and by his commitment to the national good, and I do not believe that there are such clear-cut regional interests.

The interests of New England do not necessarily diverge at all from those of Louisiana, and I think those who say consuming States ought necessarily to be for a maximum of regulation and producing States ought to be for a minimum of regulation, don't understand natural gas, and I don't think that is what you are saying. I think it is a much more complicated subject than that.

If I were a consuming State person as you are, I would personally be reassured that, since I know Rick Richard, that he would do an outstanding job. I think you are doing your duty. They gave you what you regard as an unpleasant duty to come up here and oppose an outstanding nominee. You have made your point that there ought to be more of a regional balance, and I don't blame you for that. But I would simply say that I am quite sure Rick Richard understands that he is up here as a national commissioner, one to represent the national interest, and I feel confident that he will represent your interest well.

Mr. **Burke**. I highly respect your view on this, Senator Johnston. I talked with a good friend of yours, Guy Nickles of the New England Electric System, about you just the other day, and I must say this, that I feel, and I feel very strongly that the producing States appropriately have made a great contribution to the United States and ought to be involved in energy policy very heavily at the FERC.

I received a letter from my friend, Chairman Rollins, of the Texas Public Utilities Commission, after I had issued several other statements on this subject who said that my opposition could not be based on logic. It would have to be based on regional prejudice, and I took exception to that. I pointed out he asked me to give him equal time, and I must say that I read the letter, and I found a baseball team from Boston to Milwaukee and Atlanta, and I said, the market said I was still going to root for the Braves, but I think he put a whammy on us. We have only won one game since that day, but I said at that time, and I am proud to be a New Englander and I am proud to be from Rhode Island and I am even more proud to be an American, and I think that it is essential that we have a feeling of fair play in the country.

I was a trial lawyer, and I know that when a jury is picked we made sure that we didn't pick the jury just from one neighborhood because we would be open to challenge, so we tried to have a jury that was representative of all interests.

I realize Mr. Richard is involved in this simply on the basis of the fact that he has been nominated at this point. I have the highest personal respect for Chairman Butler, the highest personal respect for David Hughes from Texas, and at one point I have done some research and producing States have been substantially, except for that 3-year gap which I don't think was right; whether you protest it or not, I think there should have been a representative of essentially producing areas of the country and substantial representation on the FERC, but when I saw the kind of imbalance that is now developing, I felt it incumbent upon me to ring the alarm bells.

We have to have a feeling that the entire process is fair. We have to have a feeling that all regions are participating equally and all regions can't be on this Commission. I understand that. I have summarized five to six regions that aren't represented, but the northern half of this country does not have a representative on the FERC. I think we have to reach a consensus on energy policy for the future, and I don't want it to be a situation where people are claiming foul or questioning the objectivity of the FERC, and not Mr. Richard individually because there is such representation.

I came here because I have this concern. I have a concern that we have millions of Americans that are having great difficulty in paying their energy bills. We as State commissioners have to struggle with 1-day suspensions by the FERC that we then have to pass through on wholesale electric prices. We feel that we have to, on a totally national basis, get out and listen to all of the American people, and I respect you, Senator McClure, all those who have spoken today for Mr. Richard, but I want you to know that 18 New England public utility commissioners did not cavalierly pass this vote. We just had felt that from a sense of fair play it should be broader, and I submit that you will find that there are many other public utility commissioners across the United States who feel the same way, and we feel that on such issues as NGPA and so forth we want to make sure that there is a balance on that committee, on the FERC.

We want to make sure that there is a thorough process of inquiry. We want to make sure that there are regional hearings and finally, we want to make sure that the FERC ultimately with the consensus which the SRIPUC is ready to participate in within the process—come back before this committee, the appropriate committees in the House and try to decide where we are going to go in 1985 or beyond and the sense of fairness and sense of fair play that I think is necessary includes—I have no argument with you or Senator McClure. I do have an argument with President Reagan about the selection of Mr. Richard right now.

I will even go this far, Senator. If this were 2 years from now or 3 years from now and there were a representative of other regions of the country on it and Mr. Richard was a nominee, I would be happy to second the nomination because I have no question about him as an individual. I hope that answers your questions.

Senator JOHNSTON. I appreciate the tone of your appearance here. I think frankly if I were in your position I would probably be doing the same thing. We call some of these sessions and some of these objections sensitivity sessions and sensitivity objections. That is to say that you want to be sure that that commissioner is sensitive, and the President is sensitive to those interests, and I think you have made your point well and fairly. I don't share your concerns about him, about the regional imbalance, because there is more than just the geography of it.

There are, as you know, many consumer interests, from all kinds of different consumers—end-use consumers, distribution companies, all the rest—and you know that those interests are there. So as I say, I appreciate the tone of your objection, and I think it is constructive. I think and I hope the President will think about regional balance on his next appointment.

The CHAIRMAN. Thank you very much, Mr. Burke. I share the comments that Senator Johnston has made about the tone and purpose of your testimony here, and about its effect. I appreciate your concern and I appreciate your appearance here today. Thank you.

Mr. BURKE. Thank you very much, sir.

The CHAIRMAN. I might suggest that those who desire to submit questions for the record, and two members of the committee, three members of the committee have indicated that they desire to do so, if they get those questions in expeditiously, we do intend to move the nominations as rapidly as we can. I would hope even those that have questions to be submitted for the record may find it in their hearts not to demand that we refrain from acting until the responses have been filed for the record, and I say that because I think it is important for the Synfuels Corporation to get these two men aboard and have them at work.

I think it is also important from a personal as well as a Commission standpoint that Mr. Richard's confirmation be expedited as much as we can. We do have a business meeting tomorrow, regularly scheduled. It would be my intention if we can clear the matter to ask that the committee act on these nominations tomorrow.

If that is impossible, we will attempt to act on them next Tuesday at the regularly scheduled business meeting.

With that, the committee will stand adjourned.

[Whereupon, at 12:05 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

INFORMATIONAL STATEMENT OF OLIVER G. RICHARD III

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Richard, III (LAST) Oliver (FIRST) Gonzard (Rick) (OTHER)

Position to which nominated: Commissioner, FERC Date of nomination:

Date of birth: 11 (DAY) 10 (MONTH) 52 (YEAR) Place of birth: Lake Charles, Louisiana

Marital status: Married Full name of spouse: Donna Guzman Richard

Names and ages of children: None

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Georgetown Law School	1979-81	MLT	August 1981
LSU Law School	1974-77	J.D.	May 1977
LSU Undergraduate	1970-74	B.A.	May 1974

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

Sanders, Downing, Kean & Cazedessus; Associate; Baton Rouge, LA; May 1977 - November 1977.

United States Senator J. Bennett Johnston; Legislative Assistant; Washington, DC; December 1977 - August 1981.

Hayes, Durio & Richard; Partner; Lafayette, LA; September 1981 - Present.

Employment record—Continued

Military service: Enter all military service if not included above: service, dates, rank, type of discharge.

None

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

National Publications Award, 1973, Sigma Alpha Epsilon,

Editor, The Lion's Paw

Omicron Delta Kappa, 1977

Who's Who in American Colleges & Universities, 1977

Outstanding Young Men of America, 1979

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Sigma Alpha Epsilon Fraternity	President	1974
Student Bar Association	President	1977
Baton Rouge Crisis Intervention Line	Board of Directors	1977
Baton Rouge Symphony	Board of Directors	1977
American Bar Association	---	1977 to Present
Louisiana Bar Association	---	1977 to Present

2

Memberships (Continued):

Organization	Office Held	Dates
Louisiana Bar Association Environmental Lawyer Section	Editor, Newsletter	1982
Eastern, Middle & Western District of Louisiana Federal Court Bar	---	1977 to Present
United States Supreme Court Bar	---	1981
Lafayette City Club	---	1981 to Present
Estate Planning Council of Lafayette	---	1981 to Present
Krewe of Bonaparte	---	1981 to Present
Krewe of Louisianans	---	1981 to Present
Eagle Scout Association Lafayette, LA	---	1982 to Present

Published writings:

List the titles, publishers and dates of any books, articles, or reports you have written.

"Building the Chapter Newsletter," Sigma Alpha Epsilon Record, Evanston, Illinois; 1973.

"Dressing Up The Levi Generation," Sigma Alpha Epsilon Record, Evanston, Illinois; 1974.

"Appeal From Jarndyce v. Jarndyce: The State Role Under The Natural Gas Policy Act of 1978," Vol. 41, Fall, 1980, Louisiana Law Review.

"Energy Famine in a Land of Plenty," New Business, Vol. 1, No. 4, November, 1981. Pub., The Times of Acadiana.

I was editor of my law school newspaper, THE CIVILIAN, from April, 1975 to April, 1976 and wrote various articles of primary concern to the law school community.

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

Not Applicable.

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

In February, 1982 an independent gas producer requested that I represent him before the FERC with regard to a rate refund issue, After reviewing the matter, I referred it to an associate in the law firm and have had no further contact with the client.

I believe I am qualified to serve on the Commission for the following reasons:

From December 1977 to August 1981, while serving as a Legislative Assistant for energy issues for Senator Johnston, I worked on significant energy legislation, many provisions which fall within the jurisdiction of the Commission. These laws include but are not limited to the:

-- Natural Gas Policy Act of 1978,

-- Public Utilities Regulatory Policy Act of 1978,

-- Powerplant and Industrial Fuel Use Act of 1978, and its later amendments,

-- Energy Security Act of 1980,

-- Oil Backout Bill,

-- Emergency Energy Conservation Act of 1980.

While serving as an Assistant for a Senator from one of the largest producing as well as consuming states, I was required to thoroughly assimilate myself to the technical workings of the regulated industries before the Commission. Importantly, during my three and one-half years as a staff member whose principal served on the Energy Committee, I was required at all times to view all energy problems and legislative responses from the perspective of the nation as a whole. This required a federal perspective as well as an international one. This perspective could only be gleaned from a thorough analysis of the workings of all components of the various energy businesses -- from their source of fuel to their end markets. This analysis included the consideration of the concerns of the people and regions affected by the particular energy policy.

My formal education, including a Masters in Taxation from Georgetown University and a Juris Doctorate, have trained me in the intellectual discipline, necessary for the complexities of rate design.

Finally, my history of extracurricular leadership roles illustrate I have the ability to interact with and carefully weigh the substantial concerns raised by parties of broad and perhaps diverse views, before independently reaching a decision that is within ambit of the jurisdictional grant of the Commission.

For the above reasons, I believe I possess the ability to serve as an independent Commissioner on the Federal Energy Regulatory Commission.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I will recuse myself from any form of participation in the matter referred to in Question 2.

6. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them.

It is my intention to comply with all applicable conflict of interest laws and regulations, and to follow the advice of the commission's ~~agency~~ ethics officer.

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FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON 20426

JUL 21 1982

Oliver G. Richard, III, Esq.
Hayes, Durio & Richard
315 S. College Road
Suite 100
Lafayette, LA 70502

Dear Mr. Richard:

This letter serves as the statement from the Designated Agency Ethics Counselor of this Commission required by question six (page five) of the Statement for Completion by Presidential Nominees that you are submitting to the United States Senate Committee on Energy and Natural Resources. I have reviewed your Standard Form 278 (Financial Disclosure Report), dated April 13, 1982, and have issued my opinion to J. Jackson Walter, Director, Office of Government Ethics, that my review of the Form did not disclose any conflicts of interest under the Department of Energy Organization Act (DOE Act), P. L. 95-91, the Commission's Standards of Conduct (18 C.F.R. §§3c.201-206) or the conflict of interest provisions generally applicable to Federal Government officials. My opinion noted that you intend to sever all ties with the law firm of Hayes, Durio & Richard, and will receive no deferred income from the firm.

Section 602(a) of the DOE Act prohibits supervisory employees from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any energy concern. The term "energy concern" is defined in Section 601(b) of the DOE Act to include any entity "significantly engaged in the business" of energy development, extraction, production, refining, transportation, distribution, sale, or significantly engaged in conducting research and development related to these activities, or in research, development or demonstration under a DOE-funded program. The term also includes any entity holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained.

Further, Section 208, Title 18, United States Code, and applicable Commission regulations, 18 C.F.R. §3c.204(b)(3), prohibit a Commissioner from participating personally and substantially, as a Government employee, in any particular matter in which he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest. This is interpreted to mean that Government employees should avoid participating in any particular matter that would have a direct and predictable effect on their financial interests.

If I may be of further assistance, please let me know.

Sincerely,

Michael Schopf

Michael Schopf
Deputy General Counsel for
Legal and Administrative
Affairs

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None

3. Are any assets pledged? (Add schedule.)

No

4. Are you currently a party to any legal action?

No

5. Have you ever declared bankruptcy?

No

6. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes

7. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

United States of America
**Office of
Government Ethics**

Office of Personnel Management
Washington, D.C. 20415

JUL 21 1982

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Oliver G. Richard, III, who has been nominated by President Reagan for the position of Commissioner of the Federal Energy Regulatory Commission.

We have reviewed the report and have also obtained advice from the Federal Energy Regulatory Commission concerning any possible conflict in light of the Commission's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Richard is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

J. Jackson Walter

J. Jackson Walter
Director

Enclosure

GD

Date of Filing — JUL 20 1982

Reporting Individual's Name: RICHARD, III — Oliver G.

Title of Position: COMMISSIONER

Department or Agency (If Applicable): Federal Energy Regulatory Comm.

Date of Appointment, Election or Nomination: 4-13-82

Termination Date

Address: 315 S. College Drive #100 Lafayette, La. 70502 — Suite 100

Telephone: 318 235-5255

Presidential Nominees Subject to Senate Confirmation

Name of Congressional Committee Considering Nomination: ENERGY & NATURAL RESOURCES

Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☑ No

Positions Held in Government During the Preceding 12 Months

Title of Position(s) and Date(s) Held: LEGISLATIVE ASSISTANT; U.S. SENATOR J. Bennett Johnston Dec. 1977- Aug. 1981

Certification

Signature of Reporting Individual: Oliver G. Richard III

Date: 4-13-82

Agency Ethics Official's Opinion

The information contained in this report discloses no conflict of interest under applicable laws and regulations.

Signature of Designated Agency Ethics Official/Reviewing Official: Michael Achoff

Date: 7/20/82

Office of Government Ethics Use Only — 7-20-82 — 7/21/82

J. Jackson Walter by DRS

Date: 7/21/82

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

Mr. Richard will terminate all ties with his law firm, and will not be receiving any deferred income from the firm. Note will be extinguished in exchange for his equity interest.

B+C - N.A.

(Check box if comments are continued on the reverse side) ☐

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If "yes", is this trust an "excepted" trust or "qualified" trust? ☐ ☐

...ition of such interest or lia- ☐ ☐

Page Number 2

Reporting individual's name: Oliver G. Richard III

Date of Filing (Month, Day, Year)

	Identification	Dividends	Rent	Interest	Capital Gains	Other			Actual Amount (Only if "Other" Specified)	Valuation Method		
	Oliver G. Richard, II Prof. Corp.					Salary			$24,500			
S	American Bank & Trust					Salary						
	U.S. Senate Employees Fed Credit union. Share Account			✓			✓					
S	Individual Retirement Account Washington Federal Savings Loan			✓			✓					
	Sale of Personal Residence Long term Capital gain (deferred)				✓			✓				
	6-month Certificate of Deposit Commerce & Energy Bank									H	✓	
	400 shares of Common stock Commerce & Energy Bank									E	✓	
	1/3 interest in Partnership By Oliver G. Richard, II Prof Corp (Hayes, Durio & Richard)									F		✓

All Assets Are Community Property.

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OLIVER G. RICHARD, III	Date of Filing (Month, Day, Year)	Page Number 3

LIABILITIES

S or DC	Name and Address of Creditor	Type of Liability (mortgage, promissory note, margin account) Give date, interest rate, if applicable, term	$10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	[illegible]
	Guaranty Bank & Trust, Lafayette, La.	Promissory note for 1/3 Partnership (NOW) demand prime		✓			

POSITIONS HELD

Name and Address of Organization	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
NONE				

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE This section is applicable only in the case of nominees and new entrants.

Source (Name and Address)	Brief Description of Duties
NONE	

RELATIONS WITH OTHER EMPLOYERS

Description of Terms of Any Agreement or Arrangement	Parties	Date (Mo., Day, Yr.)
NONE		

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STATE OF LOUISIANA

PARISH OF LAFAYETTE) ss

AFFIDAVIT

Oliver G. Richard, III , being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Oliver G Richard III

Subscribe and sworn before me this 19t day of July , 1982

James A. [illegible]
Notary Public

APPENDIX II

Responses of Oliver G. Richard, III to Additional Questions

QUESTIONS BY SENATOR WEICKER
FOR OLIVER RICHARD
AUGUST 12, 1982

1. Please outline for the Committee your view of FERC's authority and jurisdiction to act on problems arising from the use of indefinite price escalator clauses in natural gas contracts.

Answer

It is my understanding that no legal analysis has been done regarding any authority and jurisdiction of FERC regarding indefinite price escalator clauses. Comments on this matter have been requested by the Commission in the Notice of Inquiry issued on April 23, 1982. My judgment on the matter will be formed on the basis of the comments and information received. The comment period closes on August 26, 1982.

2. Also, please outline for the Committee your view of Section 601(C) which permits the pipeline companies a guaranteed passthrough of price increases to the gas distribution companies. Clearly, the gas distributors cannot operate with the same flexibility as they are accountable to public utility commissions. These commissions seem less and less likely to permit substantial passthroughs based on nothing more than a contract the pipeline company felt it should enter into knowing that its rate of return was fully protected. Is this equitable? Is it appropriate? Ought there be reconsideration of 601(C) so that pipelines are not automatically entitled to 110%, 120% or 130% of FOB crude?

Answer

It is my view that Section 601(c) of the NGPA gives little discretion to the Commission to disallow the automatic recovery of gas costs incurred by pipelines in the form of prices paid to producers for reasons other than fraud and abuse. Whether Section 601(c) should be amended to grant the FERC the authority to prevent these pass-throughs is a question that the Congress may have to answer. The comments received by the Commission in response to the NOI should be useful to the Senate Energy Committee in its consideration of this issue.

3. Do you feel that "take-or-pay" provisions incorporated in many natural gas contracts represent free market concepts which are advocated as a basis for the decontrol of natural gas? Do you feel the FERC ought to terminate the use of such provisions?

Answer

It is my understanding that take-or-pay provisions in contracts between pipelines and producers are important because without them producers are virtually unable to obtain financing from lending institutions for their exploration and drilling efforts. The issue may be when take or pay percentages become excessive. Historically take or pay levels were in the range of 60 - 75%. In the last two years some have gone as high as 95%. At that level, under conditions of falling demand pipelines may be faced with having to take deliveries of gas they cannot sell or defer deliveries and pay for it anyway. It is not clear to me what authority the Commission has to address take or pay levels specifically. I understand that the Commission is reviewing its policy toward off-system sales which pipelines turn to as a way of disposing of surplus gas.

4. Under Section 315(c) of the NGPA, FERC has the authority to review all first sale gas purchase contracts, yet has shown very little inclination to do so. Is it your intention to see that FERC aggressively fulfills its authority under Section 315(c)?

Answer

The precise words of Section 315(c) of the NGPA grant the Commission the authority to require the filing of certain natural gas contracts. I believe that currently there is considerable dispute over whether this authority is intended to encompass the power of substantive review of contracts. Personally I have not yet formed an opinion as to which is the correct legal position. However, to the extent that contract provisions may be contributing to natural gas market disruptions, their details may well be submitted to the Commission in the NOI proceeding. If the facts presented in that forum support the existence of a contract problem, then the issue becomes what remedies, if any, the Commission may and should prescribe. The question of what the remedies should be will depend on the facts disclosed in the record. The question of the scope of the Commission's authority to provide relief is unclear. If the Congress wishes to ensure the Commission's power to address these problems, this may well be a fruitful area for legislative consideration and action.

5. Even as domestic production of natural gas falls and consumption increases, we are increasing our imports of natural gas. Do you feel that this trend will increase, or that it is a momentarily unique situation? Does the trend toward increased natural gas imports concern you?

Answer

Our national experience with the hazards associated with dependence on foreign oil suggests that as a nation we will be no better served by becoming dependent on foreign natural gas. At this point we seem to be far from levels of dependence that I regard as dangerous. The current levels of gas imports may well increase slowly over time as we deplete our domestic reserves. I believe the rate of increase will be small, but in any case should be monitored closely.

August 16, 1982

The Honorable James A. McClure
Chairman
Committee on Energy and
Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman:

I provide herewith answers to questions posed to me in writing for the record of my confirmation hearings by Senators Metzenbaum and Heinz.

I have previously delivered to you on Friday, answers to questions from Senator Weicker.

I thank you and your committee staff for all the courtesies extended to me and my family and friends during the hearing and confirmation process.

Sincerely,

Oliver G. Richard III

Enclosures

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QUESTIONS BY SENATOR METZENBAUM FOR:

OLIVER G. RICHARD III

1. In 1978 the Congress passed the Public Utility Regulatory Policies Act which, among other things, expanded to some extent the authority of the Federal Energy Regulatory Commission to order utilities to inter-connect and to wheel power. Four years later it is apparent that too many conditions and restrictions were placed upon this authority to make it truly meaningful. Are you familiar with the Commission's authority in this area? To what extent do you feel this authority needs to be modified? Do you see benefits in making the nation's transmission network more accessible in order to move excess capacity from region to region?

Answer

I am generally familiar with the Commission's authority in this area and know that some of these provisions are now the subject of a certiorari petition to the Supreme Court involving cogeneration and small power production facilities. I do see benefits in making the nation's transmission network as accessible as technically possible in order to move excess capacity from region to region, but would have to study the conditions allowing this more carefully before making any comments for possible modification.

2. There has been considerable discussion particularly in the Office of Policy at the Department of Energy about the possibility of "deregulating" the electric utility industry. Systems which purchase power at wholesale depend upon effective regulation by FERC to ensure that they are not subjected to price squeeze situations, and that they pay no more than a just and reasonable

rate for electricity. What mechanisms would be employed to protect these systems if deregulation is pursued?

Answer

It is my understanding that the proposals presently being discussed at the Federal Energy Regulatory Commission do not envision industry-wide deregulation, rather they specificially exclude the full and partial requirements contracts in which price squeeze situations arise. Even if broader deregulation were urged by the Department of Energy, the Commission currently has on its docket a rulemaking which addresses price squeeze situations and their remedies. I intend to carefully study the record to address those issues.

3. Since the FERC only regulates 12 percent of all electricial sales how could a broadening of the Commission's allowance for Construction Work in Progress solve the alleged financial woes of individual privately owned utilities? What is your viewpoint, generally, regarding CWIP?

Answer

Given that the Federal Energy Regulatory Commission regulates only 12 percent of electric sales, it is unlikely that permitting utilities to collect construction work in progress (CWIP) will solve all of the financial problems of electric utilities. I am in favor of CWIP for pollution facilities and oil to coal conversion and current Commission policy set out in Order No. 555. The public comments filed in the Commission's current rulemaking on the subject have not yet been analyzed, but, if I am confirmed, I intend to scrutinize that record closely.

4. Under the Federal Power Act, wholesale electric rates may be suspended for up to five months from the time they are accepted for filing. Currently, the Commission is allowing these rate increases to go into effect after a one-day suspension period if a brief initial analysis performed by staff indicates that the filed rate does not vary significantly from what might eventually be a just and reasonable rate. Do you believe this one-day suspension policy is appropriate and consistent with the original intent of Congress in authorizing up to a five-month suspension?

Answer

The one-day suspension policy, I understand, was implemented in large part to encourage settlements and to speed the processing of rate cases by the Commission. Although I am not familiar with the Congressional intent with respect to suspension policy, sums collected prior to Commission approval of any rate increase are subject to refund.

5. What steps can the Commission take to encourage greater coordination of utilities within various regions as well as coordination among the regions in order to take maximum advantage of the considerable surplus generating capacity which currently exists?

Answer

In general the Commission can encourage greater interregional and intraregional coordination by utilities in three ways. First, perhaps the Commission can encourage participation in formal power pools. In this regard, I believe that the staff of the Commission recently completed a national power pooling study and is also developing regional studies on this question. Second, the Commission can encourage market mechanisms which further coordinate transactions. This avenue is being explored through bulk power deregulation experiments, intended to increase trade in and between regions. Finally, the Commission could review its regulations with a view toward creating incentives and removing disincentives for coordination transactions.

6. How can the Commission encourage utilities to pursue policies which will hold to minimum rate increases? What role should the Commission play, for example, in examining whether management has made prudent decisions regarding anticipated future loads, the mix of resources needed to meet these now loads, and the supervision of construction programs? How can the Commission reward prudent management decisions and penalize poor management?

Answer

The question is prudent utility management is a thorny one. The Commission must constantly balance the need for efficient operation that benefits consumers against the dangers of second-quessing management personnel, who are closer to the realities of their situation than any Federal agency can be. In its search for mechanisms to encourage better management, the Commission has contracted for a study to explore formal incentives, such as adjustments to the allowed rate of return to reward good utility management.

7. FERC has a terrible record in processing wholesale electric rate cases. It is not uncommon for such cases to take three to four years before a final decision is rendered. During this

period, wholesale customers are paying rates under a schedule which has not been found to be just and reasonable. These same systems may also be paying rates under two or three rate schedules which have not been finally acted on by the Commission. How can the Commission improve its performance in this area?

Answer

Unfortunately, the Commission's delays in processing wholesale electric rate cases are substantial. However, simply looking at the length of time which some of those cases involve is deceptive. It should be noted that many of the delays are the result of the litigation tactics of the parties, utilities and customers alike, unrelated to the Commission delay. Also proceedings are often stopped during the pendency of settlement discussions which, if successful, terminate the proceeding. Approximately two-thirds of all wholesale electric rate cases are settled. I believe that the Commission should continue its search for ways to encourage settlements. The Commission can also shorten litigation by enforcing its new rules against late intervention and by adopting generic rules which establish broad-based policy on those issues which protract rate cases. If I am confirmed, I will seek to identify issues that may be dealt with in this way.

8. Do you believe that the FERC has statutory authority to administratively price old gas on a basis other than cost plus a reasonable return?

Answer

I have not researched the scope of the Commission's authority to utilize a pricing basis other than cost plus reasonable return on "old gas". The Notice of Inquiry on the Impact of the NGPA on Current and Projected Natural Gas Markets (issued by the Commission on April 28, 1982), specifically asked for public comment on that question. If confirmed, I intend to base my opinion in this matter on a careful study of the record developed in this proceeding.

9. Do you think that producers whose investment in a flowing well was made only in the expectation of a regulated cost based rate of return should be given the windfall profit of a higher "commodity value" rate of return?

Answer

The natural gas market under the legislative scheme of the Natural Gas Policy Act of 1978 is moving toward decontrol of wellhead prices. In a free market stockholders should bear the risks of investment and receive its rewards, if any. The current natural gas market is in transition, and the facts concerning it have changed dramatically in the past year. I do not know whether those facts show that now is an appropriate time to inject free market principles into producer operations. Some of the answers to this question may be forthcoming in the public comments on the Notice of Inquiry due August 26th. I note that should the raising of the price of old gas be considered, any discussion of what your question notes as "a windfall profit", will most probably involve the Congress as it did in oil.

10. Do you favor FERC rule prohibiting pipelines from purchasing new gas at a delivered price any higher than the price of alternative fuel (No. 6 oil) to industrial and utility users?

Answer

Any proposal to prohibit pipelines from purchasing gas at a price keyed to an alternative fuel raises very complicated questions. Included are such concerns as the appropriate level of the alternative fuel cap, identification of the end user, and the mechanism for updating such a cap. In view of these problems, any such proposal that would prohibit these purchases would have to be studied in detail in order to determine whether it would serve the public interest.

11. Section 601 (c) of the NGPA prohibits the pass-through of gas costs which the Commission determines to be excessive due to "fraud, abuse or similar grounds": (1) What is your interpretation of the scope of this provision? (2) Do you believe it should be read in tandem with the prudence standard, contained in the Natural Gas Act?

Answer

I am aware of the Commission's statement of policy issued February 4, 1982. I would like to study this statement, as well as the concurring opinion, to determine what my interpretation of its scope is as well as if it should be read in tandem with the Natural Gas Act.

12. Do you favor FERC using all available legal authority under the NGA and the NGPA to protect consumers against higher prices?

Answer

Whenever a regulatory agency acts to protect a specific group, burdens may be shifted to other groups. For example, some note that if rates to residential consumers are held artifically low, their savings must be made up by industrial customers. This may result in industrial users switching to alternative fuels, and prices to residential customer to increase. Thus, short-term protective devices manufactured by regulatory agencies may, as they did in the 1970's, trigger long-term damage to the very consumers that the agency sought to protect. What is needed is a long-range view which seeks to identify the actions which best serve the public interest of all consumers, including residential, agricultural, industrial and commercial.

13. Do you agree that there is now such a substantial surplus of gas, so that price incentives to producers are no longer as necessary as once believe? Isn't it true tht gas prices are going down? Isn't it true that market-outs are in new contracts? Isn't it true that in many areas they've bumped the market ceiling? Since 50% of gas is sold to industrial and utility customers; since many of these people can use No. 6, isn't it necessary to stop the rise in producer prices? What would you do to bring prices down?

Answer

I am not aware of the amount of any surplus of gas that is available and, if any, to what extent it exists because of the current slackening in the economy. Reports do show that some high cost gas prices seem to be falling. Trade journals report that market-out clauses are appearing in some new contracts. This series of questions relates to the fundamental questions that were raised in the Notice of Inquiry. I am not sure to what extent authority exists in the NGPA to bring prices down. This issue would have to be looked at more closely on a category by category basis. I note that the institutional framework of the industry in conjunction with existing Acts should be studied very carefully to see if all parties are sensitive to changes in the market that you describe.

14. FERC's recent notice of inquiry raises a proposal to impose incremental pricing of high cost gas on low priority users of gas, including electric utilities. Under the NGPA, Congress provided that incremental pricing should apply to industrial users only, and exempted electric utilities. What is your view of the (1) legality of such a move by FERC; (2) the wisdom of incremental pricing as a policy?

Answer

It appears that incremental pricing as implemented by the Commission under Title IV of the NGPA has not been effective to achieve the purposes spelled out by the Congress in adopting those provisions. However, I do believe that it would fruitful for the Commission to review possible changes in its approach to pipeline rate design to address these same concerns. The Commission may have the authority under the Natural Gas Act to regulate and modify as appropriate the rate design of the interstate pipelines subject to its jurisdiction. However, I would like to study the issue more closely.

15. Do you believe that the NGPA requires "old" gas to be priced at cost-based rates under the NGA? FERC is proposing various schemes to bring old gas prices to "commodity value." Do you believe (1) that commodity value should be charged for old flowing gas? (2) that any "commodity value" scheme is legal under the NGPA and the NGA.

Answer

As I stated in my answer to question 9, I do not have an opinion as to whether commodity-value pricing is in the public interest at this time. The legal strictures of the NGPA concerning cost-based rates is a matter which I have not personally researched, but they are matters to which comments in response to the Notice of Inquiry have been asked to address.

16. The Commission appears to be moving toward resolution of major issues in wholesale electric rate cases through generic rulemaking proceedings. It has under consideration at the present time a new rule on allowance of construction work in progress and has announced its intention to institute a proceeding on a generic rate of return. Isn't the search for a mechanical solution to resolve the difficult questions raised in such cases an abdication of the Commission's responsibility to look at each case and arrive at conclusions which are fair to both the purchasing and selling system? To the extent the Commission relies on generic rules, how can it satisfy its legal obligation to protect wholesale purchasing systems from price squeeze situations?

Answer

I understand the concerns of those who fear that generic rulemakings undercut the preciseness of individual adjudications. I believe that the authority of the Commission to discharge its ratemaking responsibilities by rulemaking is well-settled. When an agency adopts a generic approach, it often does so in the interests of speeding its proceedings and reducing the regulatory burdens of the companies under its jurisdiction which, in turn, lowers retail prices. When a generic approach is implemented on a specific issue, the agency concerned must insure that the rule contains safeguards to address unusual situations and special complaints. In the context of a generic rate of return, care must be exercised to insure that these factors are properly balanced and that the necessary safeguards are incorporated.

17. To what extent should the Commission attempt to extract fees from jurisdictional companies and their companies who are affected by Commission actions? As a general matter, do you believe a regulatory commission should charge fees for its services?

Answer

Although I am aware that the Commission has before it rulemakings which would impose fees on those who use its services, I have no opinion on those proceedings or on the more general policy question of whether agencies should levy charges for its services, publications, and the like.

QUESTIONS BY SENATOR HEINZ FOR:

OLIVER G. RICHARD III

1. On April 28, the FERC issued a Notice of Inquiry to investigate the possibility of raising ceiling prices of old gas, gas committed to interstate pipelines prior to 1977. Would FERC be justified in accelerating the ceiling price of old gas at this time when?

   a. The President has announced that he would not seek legislation to speed the decontrol of old gas and;

   b. It is clearly not the intent of Congress to have old gas administratively decontrolled?

Answer

I am aware of the President's message as well as the strong concern of Congress in FERC's review. The question of whether or not the Commission should take any administrative action effecting the ceiling price of old gas at the present time is of course one of the primary issues which the Comission sought to address in issuing the Notice of Inquiry in April. Comments on the Notice of Inquiry are due August 26, 1982. I anticipate that they will be very voluminous. Accordingly, it would be premature for me to form an opinion on these issues without the benefit of the extensive public comments which will be available in the very near future.

2. Chairman Butler has proposed, based on language in the 1978 Natural Gas Policy Act, to allow the Commission to increase old gas, so long as those prices are just and reasonable.

What factors should be considered in making a determination of "just and reasonable"?

Answer

The term "just and reasonable" encompasses all of the factors which go into ratemaking in the public interest. Certainly, cost is a primary component of any "just and reasonable" rate. In some legislation calling for rates to be "just and reasonable", the Congress has spelled out in some greater detail what components should be included and, for example, has specifically indicated that the replacement cost should enter into the computation. *See* 49 U.S.C. § 19(a)(A) (1976). The courts in numerous cases have pointed to other factors which enter into the determination, such as the need to set rates which attract sufficient capital. The factors relevant to such a decision are broad and, as noted are, the subject of extensive Commission inquiry.

3. How would you factor in the macroeconomic impacts on different regions of the country that would result from accelerated decontrol of old gas when attempting to determine what constitutes just and reasonable?

Answer

With regard to the macroeconomic impact of changing gas prices on different regions of the country, I would emphasize that these are very complex interrelated relationships among the various factors of production upon which different regions of the country rely. Accordingly, any attempt to take into account such macroeconomic impact must be done carefully and with sensitivity to the particular characteristics of gas consumers in various regions of the country.

4. Should all gas be decontrolled immediately? What or why not? What kind of information would you bring to bear in making such a determination? In your opinion, what are the factors that you consider most important in considering the administrative decontrol of different types of gas? Can you prioritize these factors; i.e., consumer impact, regional impact on national energy supplies, etc?

Answer

I do not believe immediate decontrol is wise because of the institutional framework that must be factored in. Further, the question of whether the price of all gas should be decontrolled immediately is one that can only be addressed by the Congress. Only the Congress has the legal ability, the legal authority, to decontrol the price of natural gas. The Commission does not. It is my understanding that the Notice of Inquiry issued by the Commission in April represents an attempt to gather a broad range of information on a variety of gas pricing issues. Much of this information may also be relevant to the legislative question of whether or not gas prices should be decontrolled. Indeed, as stated in the Notice of Inquiry (at 2) "based on the record developed, the Commission would determine whether to initiate a Notice of Proposed Rulemaking and/or make recommendations to Congress." I think all factors listed in your questions are interrelated and should be considered together.

5. Is it true that because of contract escalator clauses common to the natural gas industry that increases in the price of any segment of the gas supply reverberates throughout the entire gas marketing system and raises the price of gas for all consumers? -- even if they do not actually use any of the gas directly affected by a particular rule making? How would you propose to alleviate the problem?

Answer

These questions are likely to be brought before the Commission over the coming months. There have been challenges to the continued legality of minimium bill provisions in pipeline distributor contracts as well as to take-or-pay provisions in producer to pipeline contracts. The existence of two- and three-party most favored nation clauses in conjunction with oil-parity pricing clauses in producer to pipeline contracts poses another sort of issue. This, again, is one of the issues addressed in the Commission's Notice of Inquiry. I think the comments received will be very useful in further answering your question.

6. Some have suggested that there will be a problem in 1985 when most controls are ended and gas prices adjust to prevailing market prices. If a sharp increase in gas prices does appear likely at that time would it not seem logical to extend the timing of the scheduled decontrol? If not, why not?

Answer

The price "spike" to which you allude, if it occurs, would reflect the increase in the average price of natural gas up to market clearing levels. Some fear that inflexible contractual provisions will pull the average price of natural gas to levels above those which would prevail under market equilibrium. The former increase has sometimes been the "fly up" while the latter (which would be a temporary phenomenon) has been more specifically termed the price "spike." If such a increase were to occur, it would result primarily from the fact that oil prices contrary to the NGPA's forecast have increased very substantially since its passage. The problem with deferring the time of scheduled decontrol may be the risk that world oil prices could again change drastically prior to the scheduled decontrol date. In short, if the decontrol mechanism is designed to gradually move gas prices to their market clearing levels which, of course, depend to some degree on world oil prices, one is faced with a moving target. From another perspective, however, economists note that artifically maintaining gas prices below market clearing levels imposes costs upon consumers of alternative fuels and upon consumers of all goods and services which rely upon those alternative fuels. These costs are seen in lessened efficiency, lowered productivity and a weaker economy generally. Accordingly, retaining price controls beyond the time necessary to provide for a smooth and equitable adjustment to competitive prices, could be undesirable.

7. Why would responding to an allegedly expected situation several years in the future of a significant rise in price all at once, by raising prices now, make sense when you consider the following economic ramifications:

a. As a result of raising ceiling prices on old gas prior to 1985 it has been estimated that the nation would as a result of such action face increased gas costs of between $21 billion and $48 billion over the next three years.

b. According to the Council on Wage and price stability inflation would increase by 1 to 3 percentage points. Unemployment would rise by 1 percentage point. A percentage point increase in unemployment means an additional one million workers without jobs.

c. Industrial users of natural gas would face rapidly increase production costs and falling consumer demand.

Answer

The question of the likely economic ramifications of changing gas prices is, as I stated above, a most difficult one. Under the NGPA as presently implemented, prices for deregulated gas are far in excess of the price level which analysts generally believe would prevail in an unregulated market. These exceptionally high prices contribute to the rapid increase in the average price of all gas. It may very well be that an increase in the price of older gas could force these exceptionally high prices down, contributing to a stabilization in the gas markets and a more efficient allocation of resources as exploratory and developmental resources are devoted to reasonably priced natural gas resources rather than those which can only be developed at prices of $8 and $9 MMBtu. It may, on the other hand, be that the contractual rigidities built into the system under decades of federal price regulation would mean that an increase in old gas prices might merely contribute to an overall rise, and an increase involatility in gas prices to the consumer. These are difficult questions. Estimates of the cost to the economy of retaining the present distorted pricing system are sobering; estimates of the cost of taking legislative or administrative action to address these distortions are equally problematic. Accordingly, it is an open mind that I will bring to bear on these highly complicated, technically demanding, and frequently controversial issues.

APPENDIX III

Additional Material Submitted for the Record

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citizen/labor energy coalition
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National Office: 600 West Fullerton, Chicago, IL 60614 (312)975-3680

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Secretary-Treasurer: William Hutton
National Council of Senior Citizens
BOARD OF DIRECTORS
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Massachusetts Fair Share
Ira Arlook
Ohio Public Interest Campaign
Ellen Berman
Consumer Energy Council of America
Ed Carlough
Sheet Metal Workers' International Association
Carol Carter, Iowa CLEC
Janelle Cousino
Citizens Action Coalition of Indiana
Bob Creamer
Illinois Public Action Council
Travis Crittion
Kansas City CLEC
Hector de Leon
National Council of La Raza
Allan Driscoll
Connecticut CLEC
Joe Fish, Carolina Action
Douglas Fraser
United Automobile Workers
Phil Gillispie
Nat'l Community Action Agency Executive Directors Assoc.
Robert Goss
Oil, Chemical, and Atomic Workers International Union
Tom Hayden
Campaign for Economic Democracy
Lynette Lewis, Operation PUSH
Steve McDonald, ACORN
Willard McGuire
National Education Association
Richard Munson, Solar Lobby
David Ostendorf
Rural America
Richard Prasser
Wisconsin CLEC
Betty Rademaker
Oregon Fair Share
Harvey Rosenfield
Public Citizen
Ed Rothschild
Energy Action
Tim Sampson
Citizens Action League
Jacob Sheinkman
Amalgamated Clothing and Textile Workers Union
John Sweeney
Service Employees Int'l Union
Pat Sweeney
Northern Plains Resource Council
Bernard Veney
National Clients Council
Jerry Wurf
American Federation of State, County and Municipal Employees
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Research Director
*Deceased

August 12, 1982

The Honorable James McClure
Chairman, Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Senator:

The Citizen/Labor Energy Coalition is opposed to the nomination of Oliver Richard III to the Federal Energy Regulatory Commission. The Coalition has two major objections. The first, is that Mr. Richard will be the third member of the Commission from a gas exporting state, leaving gas producers with a majority of the Commission, and gas consumers from the northeast and midwest with no representation. The second, is that Mr. Richard's views and previous actions will prejudice the Commission in favor of gas producing interests in particular proceedings.

These two concerns are of enormous importance for gas consumers across the country. Proceedings before the Commission, or being contemplated could add tens of billions of dollars to the nation's annual gas bill — deepening the recession and further burdening already hard hit seniors, workers and consumers. According to research conducted by the Energy Coalition, Commission action to raise old gas prices could cost consumers $20 billion to $48 billion over three years. The proposal to raise the price of intermediate deep gas could add $10 billion.

I. Regional Representation

Consumers in eighteen Midwest and Northeast states consume approximately 40% of all gas used in the United States. Another 25% is consumed by other importing states. Five gas exporting states produce more than 90% of all gas consumed in the United States.

With this nomination, three of the five commissioners — a majority — will be from the producing states of Texas and Louisiana. The gas importing regions of the midwest and the northeast have no representation at all. This would be the first time such an imbalance would occur since gas prices began to be regulated in 1954. This represents an unreasonable bias toward the interests of producers. A working majority of members from the producing states makes it highly unlikely that consumers will receive a fair hearing in the numerous proceedings and decisions that FERC must make. The cost to consumers could be billions of dollars.

For these reasons, news of Mr. Richard's possible nomination several months ago was greeted with concern by the Northeast-Midwest Congressional Coalition, by a bipartisan group of United States Senators, by newspapers such as the Cleveland Plain Dealer, by state and local energy regulatory officials and by organizations representing seniors, workers, farmers and consumers.

II. Natural Gas Decontrol

Both the Administration and the current Chairman of the Commission have repeatedly stated their desire to see gas prices decontrolled, or, failing that a significant acceleration in the decontrol process mandated by the Natural Gas Policy Act. Such a course of action, we believe, runs contrary to the nation's economic interests and to the interests of gas consumers. For many of these reasons, the Congress did not enact legislation to raise gas prices. Indeed, fears that the Administration, which had been frustrated by Congressional inaction, would attempt to raise prices administratively led a majority of the Members of the House of Representatives and more than thirty Senators to cosponsor a resolution opposing "backdoor" decontrol.

Mr. Richard's publicly stated views and experience working for natural gas decontrol legislation makes it highly unlikely that he will share Congress's reluctance to see natural gas prices rise. Thus, Mr. Richard's nomination should not be considered in isolation, but in the context of an ongoing debate between the White House and the Congress. In this context, Mr. Richard's nomination seems to be part of the Administration's strategy to raise gas prices without seeking Congressional approval.

Without commenting on Mr. Richard's personal qualifications for this post, it is clear that his nomination poses a serious threat to gas consumers who oppose decontrol, and fails to meet any fair standard for regional representation.

We ask that this letter be considered part of the record concerning Mr. Richard's confirmation.

Respectfully submitted,

Robert M. Brandon

Robert M. Brandon
Executive Director